

COPYRIGHT ROYALTY TRIBUNAL

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In the Matter of: :
CABLE ROYALTY DISTRIBUTION : CRT Docket 83-1
1982 - Phase II :
----- X

(This volume contains pages 1159 through 1304)

2000 L Street, Northwest
Room 500
Washington, D. C.

Monday, August 6, 1984.

The hearing in the above-entitled matter commenced
at 10:05 a.m., pursuant to adjournment.

BEFORE:

THOMAS C. BRENNAN	Chairman
DOUGLAS E. COULTER	Commissioner
EDDIE RAY	Commissioner
MARIO F. AGUERO	Commissioner
MARIANNE MELE HALL	Commissioner

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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIR.</u>	<u>TRIBUNAL</u>
PETER LEMIEUX	1170	- -	1289	- -
By Comm. Aguero	- -	- -	- -	1201
By Comm. Ray	- -	- -	- -	1201
By Comm. Hall	- -	- -	- -	1203
By Comm. Coulter	- -	- -	- -	1204
By Mr. Senter	- -	1205	- -	- -
<u>EXHIBITS</u>		<u>IDENT.</u>	<u>RECVD.</u>	
SIN Rev. #2	Cable Systems Carriage	1178	- -	
SIN #7	SIN '82 Affil. List	1196	1196	
SIN #8	Chart by Mr. Goldman	1196	1196	
SIN #9	3-1-82 Brdcast. Mag. Art.	1196	1196	
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SIN #12	Form 3; 1982 Cable	1232	1325	
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JSC 4A-C	Dist. Sig. Compar.	1183	1201	
JSC 5A-C	Ex. Dist. Cabl. Carriage	1189	1201	
JSC 6	SIN Sub. Events Comp.	1193	1201	
JSC 7	SIN Questionnaire	1201	1201	
JSC 8	SIN-ABC Compar. Chart	1201	1201	

C O N T E N T S (p.m.)EXHIBITS

<u>NUMBER</u>		<u>IDENTIFIED</u>	<u>RECEIVED</u>
	<u>SIN</u>		
14	(Comp of Sh or Vwg)	1243	--
15	(Comp WC to Cosmos)	1246	--
16	(Comp of WC to Stanley Cup)	1249	--
17	(Va vs Geo'tn-WTBS)	1257	--
18	(Ltr, 7-2-82 fr Kuhn to Turner	1264	1275
19	(Memo of Op & Ord, 10-4-82)	1265	1275
20	(JSC Sub events)	1275	1277
21	(WC-JSC)	1275	1277
22	(Dup WGN-WOR)	1282	1289
23	(Dup WGN-WTBS)	1282	1289
24	(Dup WOR-WTBS)	1282	1289
25	OTA Dup of JSC Dist Sig)	1281	1289

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P R O C E E D I N G S

(10:05 a.m.)

CHAIRMAN BRENNAN: The hearing will resume.

We will today hear the rebuttal case of the Joint Sports Claimants in Phase II.

If all the witnesses are present, I would ask them to stand and I will swear them in shortly.

Whereupon,

PETER LEMIEUX, NEIL SMITH, MICHAEL WIRTH were called as witnesses, and having first been duly sworn, were examined and testified as follows:

CHAIRMAN BRENNAN: Mr. Lloyd, call your first witness.

MR. GARRETT: Mr. Chairman, may I make a brief opening statement?

CHAIRMAN BRENNAN: Ms. Dowell, do you have any objection?

MS. DOWELL: I have no objection.

CHAIRMAN BRENNAN: Proceed, Mr. Garrett.

MR. GARRETT: Thank you, Mr. Chairman.

We have three witnesses to present this morning, Dr. Peter H. Lemieux, who is the Executive Director of Information Architects in Cambridge, Massachusetts, a consulting firm that deals in telecommunications. Mr. Neil Smith, a broadcasting engineer, with offices here in

1 Washington, and finally, Dr. Michael Wirth, who is a
2 professor in the mass media department of the University
3 of Denver, and a principle in a consulting firm, again,
4 in the field of telecommunications.

5 I think it is important to emphasize that the
6 issue which they will address this morning is not whether
7 the Spanish International Network should receive compen-
8 sation for their programming out of the 1982 royalty fund;
9 we know that SIN has already received some \$200,000 in
10 royalties as the result of their negotiated agreements
11 with the MPAA, and based upon past decisions of the Tribunal.

12 The issue that our witnesses will address this
13 morning is whether in addition to that \$200,000 SIN should
14 receive some further amount as a result of their telecasts
15 of the World Cup Soccer Event in 1982.

16 Now, the appropriate starting point will be with
17 the MPAA-Nielsen Study. In the years past we have expressed
18 criticism of that study. We have addressed certain objections
19 to that study, but nevertheless it is the case that the
20 Tribunal has looked upon the MPAA-Nielsen viewing study
21 as the appropriate starting point, and as noted in the
22 1979 case, the "single most important piece of evidence in
23 the entire record".

24 And it is also the case that the Tribunal has
25 looked at the Nielsen viewing numbers in the 1980 proceeding

1 specifically in connection with their award of .7 percent
2 of the syndicators' royalty pool to Spanish International
3 Network.

4 Dr. Lemieux has obtained the data that appears
5 in the 1982 Nielsen-MPAA viewing study and he will testify
6 about that this morning.

7 Again, we emphasize that is simply the starting
8 point, and for that reason, our presentation this morning
9 is not limited solely to the Nielsen numbers. The Nielsen
10 number, however, are quite significant because what they
11 will show is that about three-one-thousandths of one
12 percent, that is .0028 percent to be exact, about three
13 one-thousandths of one percent of the viewing in the
14 Nielsen study is attributable to the SIN World Cup tele-
15 cast. That is also about three-one-hundredths of one
16 percent of the viewing attributable to programming of the
17 Joint Sports Claimants.

18 I do not believe, Mr. Chairman, that there has
19 been a single litigating claimant in any of these royalty
20 distribution proceedings which has had a share of viewing
21 that low, and has still received some award from the
22 Copyright Royalty Tribunal, and by way of comparison, I
23 might note that that share of viewing from one-two-
24 hundred and fiftieth of the share of viewing accorded to
25 the Devotional Claimants in the 1982 study.

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1 Apart from the Nielsen viewing data, Dr. Lemieux
2 will present data that he has obtained from Mr. Larson,
3 concerning the extent of SIN World Cup carriage on a
4 distant signal basis in 1982. What this data will show
5 is that on a distant signal basis only about three percent
6 of the cable systems in the United States actually carried
7 the SIN World Cup telecast on a distant signal basis, or
8 to put it in other terms, some 97 percent of the industry
9 had no marketplace value accorded to the SIN World Cup
10 telecast, received no benefit from those telecasts, and
11 certainly were not harmed by those telecasts.

12 Again, I don't believe there has been a single
13 litigating claimant in any of these proceedings whose
14 copyrighted works have reached such an infinitesimal portion
15 of the cable industry on a distant signal basis. And,
16 again, by way of comparison, commercial radio, of course
17 has not been accorded any award in these proceedings, the
18 NAB has introduced evidence that the distant radio stations
19 reached some 33-45 percent of the industry on a distant
20 signal basis.

21 Now, of that 3 percent which did carry World
22 Cup telecasts in 1982 on a distant signal basis, we have
23 divided that into two categories: those cable operators
24 who had SIN programming available in their communities off-
25 the-air, and those that didn't. And the basis for that

1 distinction is based, in part, upon the record of this
2 case, in part upon common sense, and in part on the testimony
3 of SIN's witness Mr. Stiles, who testified, from page 413
4 of the transcript, "How do you sell a cable service to
5 somebody, if all it is going to do is rebroadcast things
6 that are already available over-the-air, nobody is going
7 to buy it". We agree with that.

8 What Mr. Smith will show is that a significant
9 number of the subscribers that received SIN World Cup
10 telecasts on a "distant signal" basis also had these
11 exact same SIN telecasts available in their communities
12 off-the-air. Again, with respect to this portion of the
13 cable industry, and taking Mr. Stiles own testimony there
14 was zero marketplace value, zero benefit, zero harm.

15 As to the remainder of the 3 percent, I believe
16 it is important to once again call the testimony of SIN's
17 own witnesses, as well as the Exhibit 1 that we had
18 introduced in these proceedings, as this evidence makes
19 clear, SIN gave the World Cup telecast away free to any
20 cable operator who wanted it, that is any cable operator
21 who was located outside the coverage area on one of their
22 affiliates. All the remainder of the systems that we are
23 talking about were located outside of that coverage area.
24 They could have gotten that SIN telecast of the World Cup
25 games free, no-charge, no obligations as SIN advertised and

1 promoted the World Cup telecast, they said, "SIN has a
2 present for you, Wold Cup '82, now available for cable
3 TV systems live and free".

4 Now, again, if they are giving these telecasts
5 away for free to anyone who wants them, absolutely free,
6 we say that is a very strong indication of the fact there
7 is no marketplace value, no benefit to any cable operator
8 going to accord the distant signal telecast.

9 I think that fact that they were giving away free
10 distinguishes them from any of the other sports claimants
11 in this proceeding, it makes them unique within that
12 category. And I think the fact that, as Mr. Stiles' testi-
13 mony and as Mr. Karowski made clear, the fact that only
14 12 cable systems out of the thousands that had it available
15 to them free, actually took SIN up on this offer, is a
16 further indication of the marketplace value and benefit
17 which was accorded by the cable industry to SIN's World
18 Cup telecast.

19 Now, we would stop here, but there is one
20 additional piece of evidence that we will be presenting
21 this morning, and that is the survey which Professor Wirth
22 has conducted of those cable operators who actually received
23 the SIN World Cup telecast on a distant signal basis in
24 1982. Dr. Wirth's conclusions about which he will testify
25 at some length will provide further confirmation that the

1 cable industry placed de minimus value on SIN's distant
2 signal World Cup telecast.

3 I will say that we have no intent here to demean
4 the uniqueness or the significance of SIN's World Cup
5 telecast, and of course, we have said nothing here about
6 any of the other fine programming that SIN has presented
7 for which is it not claiming out of the Joint Sports
8 Claimants' category. And we don't deny that the SIN World
9 Cup telecast were important to some number of both
10 Hispanic and non-Hispanic cable households.

11 Mr. Karowski in the articles which he presented
12 as part of his case is quoted as saying -- and I am taking
13 from SIN Exhibit 3-Q, saying with respect to the World Cup
14 telecast, "We are going after the hard core soccer fan
15 to encourage his love of the game", end quote. And we
16 believe that they have, indeed, attracted some of those
17 hard core soccer fans with their telecast.

18 But the issue here really has nothing to do with
19 that, or indeed, with most of the testimony that SIN's
20 witnesses presented. The issue here concerns the market-
21 place value, the benefit, the harm of the World Cup tele-
22 cast on a distant signal basis. And on a distant signal
23 basis we have the facts that very small viewing, a very
24 small percentage of households which had access to this,
25 the fact that it was given away free, the fact that very

1 few cable operators accepted the free offer. And, as
2 Dr. Wirth will testify for those who did take the World Cup
3 telecast accorded an insignificant value to that.

4 I think with that, I will stop, Mr. Chairman,
5 and call our first witness, Dr. Lemieux.

6 Whereupon,

7 PETER LEMIEUX

8 was called as a witness and, having been previously sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. GARRETT:

12 Q Dr. Lemieux, would you please state your name
13 and position, please?

14 A I am Peter H. Lemieux, I am the Director of
15 Information Architects, a telecommunications consulting
16 firm in Cambridge, Massachusetts.

17 Q Could you explain what Information Architects is,
18 Dr. Lemieux?

19 A We undertake a variety of consulting and research
20 studies for the telecommunications, entertainment, informa-
21 tion industries. And we have expertise in such areas as
22 market studies for program services, including pay and
23 free sports; and in recent months we have develop and
24 invested a considerable amount of time invested in the
25 area of multi-channel MDS which is a new competitor to

1 cable television in the pay television arena.

2 Q Dr. Lemieux, you have testified before in these
3 proceedings?

4 A I think, as Chairman Brennan mentioned off the
5 record before, I have now testified in each CRT proceedings
6 since the original one concerning the 1978 distribution
7 hearings.

8 Q It is correct that Allen Cooper still holds the
9 record?

10 A I am sure in terms of total appearances and days,
11 yes, if we were to measure viewing in that sense.

12 Q Dr. Lemieux, have you worked specifically in the
13 area of audience viewing and in particular with A. C.
14 Nielsen data in the past?

15 A In a number of different situations; first with
16 regard to the various studies that have been presented
17 before the Tribunal in past years, from the A. C. Nielsen
18 Company. Also, I, myself, have been a consultant to
19 A. C. Nielsen in other areas regarding the application of
20 its measurement techniques and technologies, such as
21 cable and other kinds of non-broadcaster competitive
22 services. Before I founded Information Architects, I
23 was the research director for Television Audiences
24 Assessment, which is a non-profit research firm established
25 by John and Mary Markel Foundation of New York, and funded

1 by the cable industry to develop methods of measurement in
2 cable television programming, and with particular emphasis
3 on measuring the qualitative aspects of programming, as
4 well as their ratings and audience appeal.

5 Q Could you also briefly describe your educational
6 background?

7 A I have a PhD in political science from the
8 Massachusetts Institute of Technology; and a Bachelor Degree
9 from Harvard. I might add that I will be joining MIT in
10 the fall on a part-time basis as a lecturer on communication
11 policy.

12 Q Doctor, when SIN presented its direct case,
13 Commissioner Aguero asked Mr. Karowski for a comparison
14 of ratings which ABC and SIN received with their telecast
15 of the World Cup Championship Games in 1982. And that is
16 at page 376 of the transcript. Do you have any information
17 responsive to Commissioner Aguero's request, Doctor?

18 A In response to that we asked the A. C. Nielsen
19 Company to provide us with the local ratings books for
20 the 11 designated market areas in which the 11 SIN
21 affiliated stations operate. One of the books was no
22 longer available, as for the Monterey-Salinas market, in
23 four other markets the SIN affiliated station does not
24 meet what Nielsen defines as minimum reporting standards,
25 that is its viewing levels are so low over the course of

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1 the entire rating month that it simply cannot be reported
2 on a reliable basis. That leaves us with six markets for
3 which we have information on how the SIN affiliated stations
4 telecast and the ABC telecast performed on a rating and
5 share basis.

6 Q Do you have that information with you?

7 A Yes, I do. If I might use the board over here.

8 While there were more telecasts that simply the
9 final, it was only on the Sunday of the first Sunday of
10 the rating period that the final game was telecast that
11 we have data for both ABC and for Spanish International
12 Network. And it is probably easiest to simply list the
13 markets and the ratings.

14 In the San Antonio market -- can everybody see
15 that? SIN's telecast was below the minimum rating, that
16 is it got greater than zero, but less than .3 of a rating
17 point, so it is designated in the Nielsen books typically
18 by two little dashes which means that there is some, but
19 not measurable viewing.

20 Q Doctor, could you just explain briefly what you
21 mean by rating and share, before we go through this?

22 A A rating is the percentage of -- well, let me
23 put the ABC number up and it may be easier to explain.
24 ABC the same day in San Antonio received a six rating and
25 a 24 share, which means that ABC got 6 percent of all the

1 households in the San Antonio market area and that repre-
2 sented 24 percent of all the households that had their
3 television set on at that time. So, we have both the
4 percentage of the entire universe and then a percentage of
5 the universe of viewers, which is the share number.

6 In Fresno, SIN also received a below rating
7 standards rating, while ABC got an eight rating and a
8 36 share. In Corpus Christi, Texas, SIN was also below
9 reportable standards, while ABC received a seven rating and
10 a 22 share. In the Chicago market, SIN received a one
11 rating, and a two share; while ABC received a five rating
12 and a 14 share. In Los Angeles, SIN received a two rating
13 and a five share, compared to ABC's six rating and 17 share.
14 And, finally, in Miami, SIN received a two rating and a
15 10 share, while ABC received a nine rating and a 36 share.

16 I might also note that at the same time as these
17 telecasts were being broadcast, on local stations some of
18 the programming for which on a distant signal basis the
19 Joint Sports Claimants are claiming, was also carried; for
20 instance, in Chicago at the same time of day as these two
21 there was a Cubs baseball game on WGN, which drew a 12
22 rating and a 39 share; in Los Angeles, there was a Los
23 Angeles Dodgers' game on KTTV which drew a 16 rating and
24 a 43 share,

25 So, that is another example, not just including

1 the ABC telecast, but also the other programming which the
2 Joint Sports Claimants have claimed on a distant signal
3 basis, and both programs considerably out-performed the
4 World Cup broadcasts by ABC, or the World Cup broadcasts
5 by SIN.

6 Q Do you have any data, Dr. Lemieux, on how well
7 certain of the baseball Games of the Week did in any of
8 those markets?

9 A On the Saturday before the final game, which I
10 put the ratings up here for, there was also a SIN telecast
11 on Saturday afternoon, which in some markets went head-to-
12 head with the NBC telecast of the major league baseball
13 Game of the Week. For instance, in Los Angeles, the SIN
14 World Cup coverage got a two rating and a six share, while
15 the NBC network baseball game got an eight rating and a
16 28 share.

17 In San Antonio, the World Cup again got less than
18 a reportable number, while the NBC telecast received an
19 eight rating and a 33 share; and in Fresno, again, we had
20 no reportable rating for SIN, while NBC's telecast of the
21 Game of the Week brought a six rating and a 26 share.

22 Q Dr. Limieux, Commissioner Ray had asked Mr.
23 Kowalski whether he had any data on viewing in distant
24 signal cable households. And do you have such data with
25 you today?

1 A We have examined the MPAA-Nielsen Study that was
2 submitted for this proceeding, and we have the data from
3 that, with regard to distant signal viewing.

4 Q I ask you to turn to Joint Sports Claimants'
5 Phase II Exhibit No. 4 please. Is the data which you have
6 obtained from the MPAA-Nielsen Study contained in that
7 exhibit?

8 A It is summarized in it, yes.

9 Q And the MPAA-Nielsen viewing study that you
10 mentioned, that is the same study about which Mr. Cooper
11 has testified in this proceedings?

12 A Yes, I believe he did so on Friday.

13 Q And you were here during Mr. Cooper's testimony?

14 A Yes, I was.

15 Q Now, the MPAA has introduced Nielsen Viewing
16 Studies in prior proceedings, Dr. Lemieux. Could you
17 explain how the study from which you derived the data in
18 Exhibit 4 compares to the prior studies done by MPAA-
19 Nielsen?

20 A It reflects the same basic methodology, they
21 submit a sample of stations -- the MPAA has selected a
22 sample of television stations which it submits to Nielsen,
23 along with a technique for identifying the distant signal
24 audiences, and then Nielsen reruns it diary-based rating
25 sample data to generate both the number of quarter-hours

1 that each program on those stations -- each non-network
2 program on those stations occupies, and the average quarter-
3 hour audience reach of those programs.

4 Q Dr. Lemieux, did you have any involvement in
5 anyway in selecting the sample that the MPAA used in
6 formulating the 1982 --

7 A No, I did not.

8 Q Did Joint Sports Claimants have any involvement?

9 A No, they did not.

10 Q Did you have any involvement in collecting or
11 organizing the data that was contained?

12 A No, I did not.

13 Q And did Joint Sports Claimants?

14 A Again, they did not.

15 Q Did you have any involvement whatsoever in the
16 1982 Nielsen-MPAA study?

17 A No, I did not.

18 Q And did Joint Sports Claimants?

19 A They did not.

20 Q Were there any SIN-affiliated stations included
21 in that study, Dr. Limieux?

22 A Yes, KMEX in Los Angeles.

23 Q Let me ask you --

24 MR. GARRETT: Mr. Chairman, off the record for
25 just one moment.

1 (Discussion off the record)

2 MR. GARRETT: For the record, I have a number of
3 questions to ask Dr. Lemieux concerning the revised exhibit,
4 SIN Exhibit 2 which we will introduce. This exhibit re-
5 flects the distant signal carriage of the SIN stations during
6 1982.

7 (Whereupon, the document was marked
8 for identification as SIN Revised
Exhibit No. 2)

9 BY MR. GARRETT:

10 Q Dr. Lemieux, referring to that revised SIN Exhibit
11 2, could you tell us a little bit about the carriage of
12 KMEX, the SIN-affiliated station in the Nielsen Study,
13 vis-a-vis all of the other SIN-affiliated stations?

14 A Yes, it is by far the largest, the widest cir-
15 culated of the SIN-affiliated stations on distant signal
16 basis; it has well over 500,000 distant signal subscribers
17 that can watch it, which constitutes over 60 percent of
18 all the distant signal subscribers on Form 3 systems that
19 have access to any of the SIN-affiliated stations. So, it
20 is the predominant SIN-affiliate in terms of distant
21 signal carriage by Form 3 cable operators.

22 Q Doctor, have you checked the data in Exhibits
23 4-A, 4-B and 4-C?

24 A Yes, I have.

25 Q And could you explain how you have come about the

1 data which is contained in that exhibit?

2 A If we start first with the line that is in
3 Exhibit 4-A for Joint Sports Claimants, the 161 million-
4 plus household hours line, that number was provided to us
5 by the Motion Picture Association of America, which ran a
6 separate tabulation of the total number of household hours
7 from its computer tape provided by Nielsen, which has a
8 designation for 6-MS, which is major sports, as classified
9 by MPAA and Nielsen.

10 That number represents the product of the number
11 of hours of telecasting times the average quarter-hour
12 audience for all of the Joint Sports Claimants' programming
13 on a distant signal basis from the Nielsen Study.

14 The entry for the SIN World Cup was calculated
15 in a similar manner by ourselves, using the individual
16 program entries in the large volumes of MPAA-Nielsen data
17 that are sitting on the desk over here. And that number
18 comes, again, from multiplying the average quarter-hour
19 audience times the number of quarter-hours broadcastings
20 for SIN programming, the World Cup programming, and then
21 dividing by four to convert into hours.

22 Q Doctor, the large volumes that you referred to
23 here, these are the same ones that Mr. Cooper testified
24 to as the back-up volumes?

25 A That's right.

1 MR. GARRETT: And I should just note for the
2 record that we have provided all of the back-up volumes,
3 as well as the summary volume to SIN counsel last week.

4 BY MR. GARRETT:

5 Q Doctor, the notations for JSC, or Joint Sports
6 Claimants, what programming is included in that category?

7 A It includes the professional and collegiate
8 sports programming claimed under the Joint Sports Claimants'
9 claim, professional baseball, basketball, hockey, soccer
10 and NCAA events carried on the MPAA sample of stations.

11 Q Now, when you say soccer, are you referring to
12 anything other than North American Soccer League?

13 A No, I am talking about the North American Soccer
14 League soccer.

15 Q When you say baseball, are you referring to any-
16 thing other than major league baseball?

17 A No, again, just to the claims of the professional
18 -- the four professional leagues, and the NCAA.

19 Q Those entities which comprise the Joint Sports
20 Claimants?

21 A That's right.

22 Q How did Nielsen classify -- the MPAA and Nielsen
23 classify the programming of the Joint Sports Claimants?

24 A As I said before, it was a thing called 6-MS.

25 Q Is there any World Cup telecast included within

1 that category?

2 A No, it was included within a category called
3 8-HS, for Hispanic programming, which was held out separ-
4 ately.

5 Q Doctor, have you finished your explanation of
6 Exhibit 4-A?

7 A Well, we can go on to the findings now. As the
8 table makes abundantly clear, if one compares distant
9 signal viewing of SIN World Cup telecasts in the MPAA-
10 Nielsen Study, to the viewing of Joint Sports Claimants
11 programming in the Nielsen-MPAA Study, we find that of the
12 total of 161,678,105 household hours, SIN programming
13 makes up only .0003 of 1 percent, or .0003 of a proportion
14 of all that viewing.

15 Q I ask you to turn to Exhibit 4-B and explain
16 that, please.

17 A Yes, there are two different numbers that go
18 into the calculation of viewing, one of them is time, the
19 amount of time an event or program of any kind occupies
20 during the broadcast day; and the audience size, the so-
21 called average quarter-hour audience, expressed in house-
22 holds for that. In this table we have computed two numbers
23 -- actually, I believe we received these numbers from the
24 MPAA, which again did the calculations for us. For what
25 we have here as share of viewing, and share of time, share

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1 of time is the percentage of all quarter-hours in the MPAA-
2 Nielsen Study that were quarter-hours of Joint Sports
3 Claimants' claimed programming. That records to 1.88
4 percent, so that of all the programming on distant signal,
5 non-network basis on the 89 stations in the MPAA-Nielsen
6 Study, Joint Sports Claimants' programming occupied 1.88
7 percent of the total time. That 1.88 percent of the time,
8 however, generated 8.37 percent of the viewing.

9 And it is because the average quarter-hour
10 audience for Joint Sports Claimants' programming is so
11 high compared to the average quarter-hour audience for
12 programming in other categories -- let's just call it non-
13 sports programming -- sports garners a proportionately
14 greater share of viewing. In this case, the ratio is some-
15 thing like nearly 4.5 to one, if you compare shares of
16 viewing to shares of time.

17 We have made the same calculation ourselves from
18 the Nielsen "back-up" volumes for the SIN World Cup tele-
19 casts which we find here occupy .0097 percent of the time,
20 and accounted for .0028 percent of the viewing.

21 So, you can see from the ratio in the far right-
22 hand column; the relationship between viewing and time
23 for the SIN World Cup is, in fact, the reverse of the
24 relationship between viewing and time for the Joint Sports
25 Claimants' programming, namely because SIN World Cup was

1 watched by proportionately much smaller audiences than all
2 non-World Cup audiences, it gets a ratio which means it
3 has less viewing than it has time on the air.

4 Q Doctor, could you turn now to Exhibit 4-C and
5 explain what that shows, please?

6 (Whereupon, the documents were marked
7 for identification as Joint Sports
8 Claimants' Exhibits 4-A, B and C)

8 THE WITNESS: Finally, we compared -- first of
9 all, I should note that there is a typographical error in
10 Exhibit 4-C, namely the entry 9449 percent in the second
11 line, should, in fact, be 99.49, it is the difference between
12 100 percent and .51 percent.

13 What we have done is to compare the SIN World
14 Cup viewing to the viewing of all other programs in the
15 8-HS category, namely all other programs on Hispanic
16 stations in the sample. And what we find it that the
17 SIN World Cup accounted for only .51 percent of the total
18 viewing on a distant signal basis to the SIN-affiliated
19 stations in the MPAA-Nielsen Study.

20 BY MR. GARRETT:

21 Q And, Doctor, is that .51 percent of SIN-
22 affiliated stations viewing, or is there something in
23 addition to the SIN programming?

24 A Well, it is all Hispanic programming that was
25 carried on two stations, KMEX, which is an affiliate and

1 WNJU in New Jersey, which I believe is not an affiliate
2 of SIN, but which does carry a considerable amount of
3 Spanish language programming.

4 MR. GARRETT: Mr. Chairman, I understand that SIN
5 has the revised Exhibit 2.

6 MS. DOWELL: I will distribute to counsel SIN
7 Revised Exhibit 2.

8 MR. GARRETT: Mr. Chairman, as I mentioned before,
9 this exhibit is one which we had provided to the Spanish
10 International Network, reflecting carriage of the SIN
11 affiliated stations in 1982-2, which is the second account-
12 ing period of 1982, on a distant signal basis of Form 2
13 systems and Form 3 cable systems.

14 BY MR. GARRETT:

15 Q Dr. Lemieux, let me ask you now to turn to Joint
16 Sports Claimants Phase II Exhibit No. 5.

17 A (Perusing document.)

18 Q Do you have that before you?

19 A Yes, I do.

20 Q Where was the data in Exhibit No. 5 taken from?

21 A It is taken from the compilation and computeri-
22 zation of the Form 3 statements of accounts filed by
23 Larson Associates.

24 Q And that is the same data base which forms the
25 basis of SIN Revised Exhibit 2, is it not?

1 A Yes, it is.

2 Q Doctor Lemieux, in Exhibit 5, you have focused on
3 Form 3 systems which have carried SIN-affiliated stations
4 as well as Joint Sports Claimants' stations, what is the
5 basis for focusing totally on Form 3?

6 A The Form 3 systems account for, I believe, it is
7 well over 90 percent of the royalties that have been paid
8 into the royalty pool by the cable operators carrying
9 distant signals in 1982.

10 Q Let me ask you to turn for just a moment to
11 SIN Revised Exhibit 2, will you tell us the amount of
12 royalties that were paid by Form 2 systems, as compared
13 to royalties paid by the Form 3 systems as it appears on
14 that Exhibit 2?

15 A If you turn to page 5, the first page 5 since
16 there is more than one page 5, it says, "Accounting period
17 1982-2, distant full-time number of systems equal 33 has
18 a royalty of \$20,970 paid for Form 2 carriage of SIN
19 stations on a full-time basis" and an additional \$1,198
20 in royalties accounted for by the carriage of SIN-affiliates
21 on a part-time basis.

22 The equivalent page 4, which is the very last
23 page of the exhibit, which is also called page 5, is for
24 Form 3 systems. And here we see that carriage of SIN-
25 affiliates on a full-time basis accounted for \$1,160,108

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1 in royalties; and part-time carriage accounted for an
2 additional \$83,560..

3 So, if you compare those two numbers which are
4 about \$1.25 million for Form 3s, it compares to a number
5 of about \$22,000 for Form 2s.

6 Q About what percentage is represented by the
7 Form 3 systems?

8 A Certainly in excess of 90 -- I would have to
9 be more careful to give you an exact number.

10 Q Doctor, focusing now just on Exhibit 5-A, could
11 you explain what that exhibit shows?

12 A Exhibit 5-A is a summary of the SIN Revised
13 Exhibit 2 that sums up the results for the carriage of
14 SIN-affiliates. We find that eight of the 11 SIN-affiliates
15 were carried on a distant signal basis by Form 3 systems
16 in 1982-2, those were carried on 34 different cable systems,
17 which makes up 2.42 percent of all of the Form 3 cable
18 systems.

19 This morning we were informed by SIN counsel that
20 there is an error in the subscriber number which we have
21 since examined and find to be true; rather than 828,000
22 it should be 830,664. That is the total number of distant
23 signal subscribers of Form 3 cable systems that have
24 SIN-affiliates available to them. And with the revision,
25 it probably pushes the percentage of all Form 3 subscribers

1 up to about 4 percent.

2 Q Doctor, could you compare number 34, which is in
3 the second column of 5-A with the numbers in SIN Revised
4 Exhibit 2, the final page?

5 A On the final page of the exhibit it appears that
6 there are 35 full-time systems, but, in fact, one of them
7 carries two SIN-affiliates, so there are actually 34 un-
8 duplicated systems that carry SIN on a full-time basis.
9 And then we have excluded as well the three part-time
10 carriage examples.

11 Q What was the basis for excluding the part-time
12 carriage?

13 A Again, it is because they account for a very
14 small fraction of the royalties.

15 Q Doctor, let me direct your attention to Exhibit
16 5-B. Can you explain that exhibit?

17 A This exhibit presents parallel information for
18 the 53 stations which originated Joint Sports Claimants'
19 telecasts during 1982. Those 53 stations were carried
20 on 1347 systems, which themselves accounted for 95.8
21 percent of all the Form 3 systems and were available to
22 over 20 million subscribers, which is 96.08 percent of
23 all of the Form 3 distant signal subscribers.

24 Q Would you contrast Exhibit 5-A and 5-B, please?

25 A What we have basically is the reverse relationship

1 that is SIN-affiliates are not carried by 97-plus percent
2 of the systems, and not seen by 96 percent of the sub-
3 scribers, whereas Joint Sports Claimants' programming is
4 carried by 96 percent of the systems and is seen by 96
5 percent of the subscribers.

6 So, we have basically extremely disparate results
7 here, SIN is carried very rarely and not seen very widely;
8 Joint Sports Claimants' programming is carried very widely
9 and seen by large number of distant signal subscribers.

10 Q Do these figures have any bearing, in your judg-
11 ment, on the Tribunal's criteria of marketplace value and
12 benefit and harm?

13 A Well, it seems clear that Joint Sports Claimants'
14 programming is likely to be of considerable benefit to
15 most of the Form 3 cable subscribers, since it is available
16 to them, whereas SIN's programming can only benefit a very
17 small number of subscribers.

18 Q Doctor, finally, turning to Exhibit 5-C, could
19 you explain what that exhibit shows?

20 A Yes, this compares what are called instances of
21 carriage, that is if we take the SIN number, for example,
22 which has 35, that includes the duplicated signal, that
23 is it includes the cable systems that has two carriages.
24 So, if every cable system that carried a SIN affiliate
25 carried only one SIN affiliate, there would be 34 instances

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1 of instances, 34 systems times one. There is, in fact,
2 another instance, because one of them carries two.

3 On the other hand, for Joint Sports Claimants
4 flagship stations, because so many cable systems carry more
5 than one flagship station, there are many more instances
6 then there -- 3101, which compares to the 1347 systems on
7 Exhibit 5-B. That is the 1347 systems in toto carry 3131
8 JSC flagship stations. And, in fact, if you look at the
9 bottom of the page which breaks down that carriage, you
10 can see that only 300 of the Form 3 systems carry but one
11 flagship; while 521 carry two; 392 carry three; 93 carry
12 four and so, up to over eight.

13 (Whereupon, the documents were marked
14 for identification as Joint Sports
Claimants Exhibit 5-A, B and C)

15 BY MR. GARRETT:

16 Q Doctor, let me ask you at this time to turn to
17 Joint Sports Claimants' Phase II Exhibit No. 6.

18 Do you have that before you?

19 A Yes, I do.

20 Q Dr. Lemieux, have you reviewed the testimony of
21 SIN's vice president Mr. Andrew Goldman in this proceeding?

22 A Yes, I did.

23 Q And are you familiar with the subscriber events,
24 end quote, formula, which Mr. Goldman offered?

25 A Yes, I am.

1 Q It is true that that formula is based, in part,
2 upon Sports Exhibit 23 in the 1980 proceedings, and that
3 you helped sponsor in the 1980 proceeding?

4 A From my reading of Mr. Goldman's testimony, I
5 believe that is the case.

6 Q And you did, indeed, sponsor Exhibit 23?

7 A Yes, I did.

8 Q Do you have any observations as to the comparisons
9 made by Mr. Goldman between the Joint Sports Claimants'
10 sports and the SIN World Cup telecast?

11 A Well, trying to measure 1982 distant signal
12 carriage from 1980 data, with regard especially to the
13 two superstations, is very under-representative of their
14 true carriage. For instance, I happen to have before
15 me Sports Exhibit 23 which records for WGN in 1980,
16 2,871,000 distant signal subscribers; but in fact, in 1982
17 that figure is now somewhere on the order of 10 million
18 distant subscribers. So, because of its satellite cover-
19 age, and the rapid expansion of cable systems, we have
20 seen extraordinary expansion of the number of distant
21 signal subscribers.

22 A similar case holds for WTBS, which in 1980
23 was available to only a little over 8 million subscribers,
24 whereas in 1982, I believe it is available to somewhere
25 over 20 million subscribers. So, using the 1980 figures

1 from this table does not give a very accurate portrayal
2 of subscriber events, especially with regard to the super-
3 stations, because they now reach a substantially greater
4 number of subscribers than they did in 1980.

5 Q What form cable systems are included in your
6 Exhibit 23?

7 A Only Form 3s.

8 Q And those were the only form cable systems used
9 by Mr. Goldman in his testimony?

10 A No, I believe he also included the Form 2s.

11 Q He used Form 2 and Form 3?

12 A That is my understanding.

13 Q Are there any telecasts of members of the Joint
14 Sports Claimants that are not included in Sports Exhibit 23
15 in the 1980 proceeding?

16 A Yes, because they are so numerous, we did not
17 include all of the instances of NCAA carriage, for which
18 there are in the hundreds, or even well over a thousand
19 events every year. So, all the distant signal NCAA
20 carriage for which the Joint Sports Claimants are making
21 a claim is not included in Sports Exhibit 23, and thus
22 not counted by Mr. Goldman.

23 Q How about of --

24 A Also, a number of these flagship stations are
25 Canadians, since they carry either hockey or major league

1 baseball. And, again, Mr. Goldman only commented on
2 stations that are located in the United States in his
3 calculation of subscriber events.

4 Q Now, Doctor, do you have Exhibit 6 there in
5 front of you?

6 A Yes, I do.

7 Q I believe that when Mr. Goldman completed his
8 testimony concerning subscribers events formula he showed
9 that the relative percentage of SIN World Cup telecasts
10 compared to those -- I'm sorry, SIN World Cup subscriber
11 events as compared to those of Joint Sports Claimants'
12 was something on the magnitude of 1.5 percent?

13 A That is my recollection.

14 Q And he did, in all fairness, acknowledge that
15 number would be reduced if one takes account of some of
16 the various points that you testified about. Can you
17 just explain Exhibit 6 and how the 1.5 percent that Mr.
18 Goldman testified about, how that relates to what you have
19 here on Exhibit No. 6?

20 A We were not able in the limited time available
21 to us to actually compute all of the distant signal sub-
22 scriber events that we had, in some cases because the
23 list of events, especially with the NCAA is so large.
24 So what we have done is taken just the three satellite
25 delivered so-called superstations which, as you see, in

1 the computer printout that follows on the next page, we
2 have for instance on the first line that WGN telecast 149
3 games, major league baseball games and those reached
4 10,900,000 Form 2 and Form 3 subscribers on WGN, or a
5 grand total of 1,625,000 subscriber events.

6 Similarly, we have 8 million-plus subscribers
7 for WOR and the events listed there; and 19 million Form
8 2 and Form 3 subscribers to WTBS in 1982-2, with the
9 subscriber events there that leads to 663 events, which
10 generated 8,801,000-plus subscriber events for Joint
11 Sports Claimants programming on the three superstations
12 alone.

13 (Whereupon, the documents were marked
14 for identification as Joint Sports
Claimants' Exhibit No. 6)

15 THE WITNESS: We then took the recalculated SIN
16 World Cup figure, based on Revised SIN Exhibit 2, which is
17 47,609,000 subscriber events, and just comparing that to
18 the total of SIN World Cup plus superstation events, we
19 get that the SIN World Cup now falls from its alleged
20 1.5 percent figure share of Joint Sports Claimants' events,
21 down to .5 percent of Joint Sports Claimants' events.

22 And I might add that we obviously have not
23 included 50 more television stations which in 1982-2 carried
24 Joint Sports Claimants' programming, nor any of their
25 events, including what we understand to be over 1800 events

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1 alone telecast by the NCAA, which are excluded from Mr.
2 Goldman's calculation.

3 BY MR. GARRETT:

4 Q Do you have any idea how many television stations
5 telecast NCAA events in 1982?

6 A I believe the number is over 500.

7 Q Doctor, let me refer to Exhibit 4 again, that is
8 the one of the viewing figures. Is there any correlation
9 between this concept of subscriber events and the concept
10 of viewing that we discussed in Exhibit 4?

11 A Not really, because viewing obviously depends
12 on the number of people who watch. If you have countless
13 events with no audience, you would get a large subscriber
14 event figure, but you would still have essentially no
15 value, because no one is watching the programming. So,
16 subscriber events as a basis for calculating the benefit
17 to a cable subscriber, in fact, in some ways is biased
18 against the popularity of programming because it would count
19 equally events that have no viewing with events that have
20 millions of viewers.

21 And so in that sense subscriber events is probably
22 not a very useful -- in fact, in some ways, quite a
23 fallacious way of examining benefit of particular types of
24 programming, as compared to say, looking at actual viewing
25 which we do in Exhibit 4-A.

1 Q Doctor, do you have SIN Exhibit No. 7 before you?

2 A (Perusing documents) Yes, I do.

3 MR. GARRETT: I understand that SIN Exhibit No. 7
4 has not been previously circulated among the Tribunal. I
5 think it would be helpful if we could have that done at
6 this point.

7 MS. DOWELL: At the close of the last proceeding
8 there were a number of exhibits that had not been intro-
9 duced, but that were promised. And I would like to intro-
10 duce all those at this time.

11 The first is SIN Exhibit 7, which is the 1982
12 SIN affiliate list, previously counsel for Joint Sports
13 had been using an '81 listing and we agreed to provide the
14 list for 1982.

15 Secondly, is SIN Exhibit 8, which was the chart
16 that Mr. Goldman referred to in his testimony.

17 Thirdly, is SIN Revised Exhibit 8 which is the
18 formulas also testified to by Mr. Goldman, but using the
19 data -- the subscriber data that SIN received and was
20 introduced in SIN Exhibit 2 and also based on the new
21 count of subscriber events supplied by the Joint Sports
22 Claimants.

23 And, finally, second to last is SIN Exhibit 9,
24 which is the March 1, 1982 broadcasting article that was
25 referred to in SIN's direct case.

1 Finally, there is a SIN Exhibit 10, which is an
2 affidavit of Susan Catapano. Ms. Catapano is the affiliate
3 director's relations -- director of affiliate relations
4 at SIN. And in reviewing the transcript there were some
5 misstatements in Mr. Goldman's testimony. A copy of this
6 affidavit has been previously supplied to counsel for Joint
7 Sports and I would like to have it introduced into the
8 record at this time.

9 CHAIRMAN BRENNAN: They will all be received into
10 evidence.

11 (Whereupon, the documents were marked
12 for identification as SIN Exhibits
7-10 and received into evidence.)

13 MR. GARRETT: Dr. Lemieux just testified as to
14 what Joint Sports Claimants' 6 which uses the subscriber
15 events formular developed by Mr. Goldman during his
16 testimony; Revised Exhibit 8 of SIN is intended to do the
17 same thing.

18 Our Exhibit 6 shows that the SIN World Cup
19 percentage is .53 percent; Revised SIN Exhibit 8 says
20 1 percent. And as I understand it, that is because SIN
21 has rounded the number of .53 to 1 percent?

22 MS. DOWELL: No, it should be .53 percent. We
23 have not rounded -- let me ask counsel one question.

24 (Discussion off the record)

25 MS. DOWELL: This is page 4 of Revised SIN

1 Exhibit 8, are the other numbers there correct?

2 MR. GARRETT: They track our numbers.

3 MS. DOWELL: We stand corrected at .53 percent.

4 BY MR. GARRETT:

5 Q Doctor, you have SIN Exhibit 7 before you now?

6 A Yes.

7 Q Pages 460, 462 and 534 of the transcript, SIN's
8 witness Mr. Stiles and Mr. Goldman testified that this
9 Exhibit 7 was used by SIN sales people in attempting to
10 sell advertising. Mr. Stiles also testified on page 403,
11 at least at one point that SIN is, quote, "Unable to
12 utilize and unable to market the advertisers", end quote
13 "in those households who receive SIN affiliates on a
14 distant signal basis".

15 With specific reference to SIN Exhibit 7 do you
16 have a comment on that testimony?

17 A Well, if that is the purpose of SIN Exhibit 7,
18 that it is, in fact, a marketing tool, to advertisers,
19 there are, in fact, a considerable number of distant
20 signal SIN viewers -- rather not viewers, but households
21 who can receive SIN programming listed on SIN Exhibit 7.

22 For instance, under California, the Oceanside
23 listing is 9,800 households, is one of the SIN distant
24 signal systems; the Palm Desert entry is the Cathedral
25 City Cable System, the Palm City entry is also a distant

1 signal carriage; the San Diego listing includes the distant
2 signal carriage of KMEX on both the Cox System in San
3 Diego and the ATC System in Pacific Beach, California.
4 The Santa Barbara and San Maria entries for California are,
5 again, distant signal entries.

6 And going down to the Florida case, the West
7 Palm Beach entry is a distant signal system and in the
8 case of the Connecticut entries, also on the first page,
9 the Waterbury System listed there is a distant signal and
10 some of the 725,000 households listed as being available
11 to see the signal in Hartford are distant signal households
12 that are located within the ADI.

13 Q When you say located within the ADI, would you
14 explain what you mean?

15 A There are in some markets, if the market is large
16 enough geographically, that in order for the entire market
17 to be covered by a television station, they are indeed
18 carried on a distant signal basis within the same television
19 market which is defined for marketing purposes, rather
20 than by the FCC's rules of signal carriage. So, because
21 the Hartford-New Haven market is quite large geographically,
22 there are systems that are unable to see signals that are
23 in Hartford, but nonetheless receive those signals by cable
24 on a distant signal basis, and are included in the count
25 for the Hartford market area, so-called ADI in the Arbitron

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1 designation.

2 Q Doctor, which cable systems which are listed in
3 SIN Revised Exhibit 2 are also within the Hartford ADI
4 and therefore excluded in SIN Revised Exhibit -- I'm sorry,
5 SIN Exhibit 7?

6 A Aside from the Waterbury entry which we had before,
7 there is also one in Wellingford and one in Middletown,
8 Connecticut.

9 Q And you testified earlier that there are certain
10 systems which are included within SIN Revised Exhibit 2,
11 but are also in the Los Angeles ADI and therefore included
12 on SIN Exhibit 7, is that correct?

13 A I didn't, but I will now. There are also two
14 more systems that are in Oxnard and Ojai, which are in the
15 Los Angeles market, which account for about 32,000 sub-
16 sscribers.

17 Q Doctor, there are approximately 900,000 subscribers
18 according to SIN Revised Exhibit 2, who receive one of the
19 SIN affiliates on a distant signal basis in 1982, do you
20 know approximately how many of those subscribers are
21 accounted for in SIN Exhibit 7, the advertising marketing
22 tool of SIN?

23 A On a direct basis we have been able to identify
24 on the order of 460,000.

25 Q When you say direct basis --

1 A That is comparing, for example, the Oceanside,
2 California listing here with the listing that we have from
3 Larson Associates that is in SIN Revised Exhibit 2, where
4 the signal appears in both cases.

5 Q You included those not on a direct basis, but
6 those that are within the ADI, to get the additional number?

7 A About another 80,000 maybe another 100,000.

8 Q And could you also explain the situation with
9 respect to Bakersfield, which I believe is included both
10 in SIN Revised 2 and SIN Exhibit 7?

11 A There is a TV translator station which essentially
12 is a repeater, that broadcasts KMEX in the Bakersfield,
13 California area, but from SIN Revised Exhibit 2 there are
14 56,362 subscribers that receive KMEX not from the trans-
15 lator, but on a distant signal basis via the cable system
16 importing KMEX from Los Angeles.

17 Q And that was the situation in 1982?

18 A That is my understanding, yes.

19 Q Now, is it fair to conclude by examining SIN
20 Exhibit 7 and SIN Revised Exhibit 2 that you SIN distant
21 signal audience in marketing is programmed to advertisers?

22 A It seems clear to me that those distant signal
23 audiences are being counted in this list of its satellite
24 interconnected affiliates.

25 MR. GARRETT: I have no further questions.

1 CHAIRMAN BRENNAN: Are there any questions at this
2 point by commissioners?

3 EXAMINATION BY TRIBUNAL

4 BY COMMISSIONER AGUERO:

5 Q On the board there could we have a copy of those
6 numbers -- do we have those numbers, too?

7 A I did not include them intentionally. The New
8 York station, KXTV, the SIN affiliate does not meet the
9 minimum rating standards for the Nielsen book and is not
10 reported. That is also the case with the signals in Modesto,
11 San Francisco, and Phoenix. So, there are four signals for
12 which we cannot get any data whatsoever because Nielsen
13 does not report any data for those stations.

14 (Whereupon, the documents were marked
15 for identification as Joint Sports
16 No. 7 and 8, and JSC 4-8 received.)

16 CHAIRMAN BRENNAN: Commissioner Ray.

17 BY COMMISSIONER RAY:

18 Q I do have one question. In your opinion, is the
19 Hispanic representation under-represented in the
20 Nielsen Study in a market like Fresno for the Hispanic
21 households?

22 A Well, I understand that there is considerable
23 debate about that. All these markets are markets where
24 Nielsen undertakes what are called "special ethnic techniques"
25 to increase the representation of Spanish households. I am

1 not really capable of commenting on whether or not I think
2 that is a good methodology. I haven't studied it in great
3 detail and there is a lot of debate within the industry
4 about whether that is a good methodology, or bad methodology,
5 some of which has been sparked by SIN.

6 It seems to me that -- my feeling from talking
7 to the people I know at A. C. Nielsen is that they strive
8 to do a very good job of representing television audiences
9 as far as they possibly can. That is their main line of
10 business, if they didn't do that, they would lose their
11 reputation among advertisers and agencies, and broadcasters.
12 To that extent, I think they have worked very hard to main-
13 tain a sample that is a good representation, but I really
14 am not capable of commenting professionally, I don't think,
15 about whether or not a particular market here is good or
16 bad.

17 Q But there is no data available that would give
18 us a comparison of the sample -- I mean, compared to the
19 general population, like in the Fresno market?

20 A I don't believe it is reported in the books. I
21 could take a look for you, if you would like. My under-
22 standing is that that is not a number that -- they usually
23 have a listing of various market characteristics and they
24 talk about how the sample compares. I don't believe that
25 Spanish speaking households is one of the entries in that

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1 table, although if you give me a second, I could go check
2 for you.

3 Q That is not necessary. Thank you.

4 BY COMMISSIONER HALL:

5 Q Of these six stations you have chosen and the
6 five you eliminated that had lesser than adequate
7 statistics, first of all, how were your first 11 stations
8 chosen?

9 A They are the 11 SIN affiliates.

10 Q Oh, I see.

11 A We tried to get data for all 11 SIN affiliates,
12 for one of them, Nielsen no longer even had the book. I
13 mean, it was just simply not in their library anymore,
14 that was the Monterey-Salinas market. And in four more
15 of the markets: New York, Phoenix, San Francisco and
16 Modesto the station does not meet reportability criteria
17 for the entire rating period and thus never appears in the
18 book with any programming whatsoever.

19 And then that leaves us with these six stations
20 that do meet the minimum standards, and thus, have reported
21 program data.

22 Q The survey is the Nielsen Survey and it is one
23 of the metered surveys, or households, or what?

24 A No, these are done -- it varies. In the Chicago
25 and in the Los Angeles market, it is done with meters, in

1 the other four markets there it is done with diaries, where
2 people get for a week a booklet that they fill out their
3 viewing.

4 Q Did this World Cup happen to fall on a diary
5 week?

6 A Yes, it happened to be in the month of July,
7 which is a Nielsen sweep month.

8 COMMISSIONER HALL: Thank you.

9 BY COMMISSIONER COULTER:

10 Q Is it your view that they should get a portion
11 of sports royalties that they get according to the per-
12 centages you just gave us?

13 A Mr. Coulter, you know that I am not going to
14 make an advocacy statement.

15 Q Or that it is so small that you don't know?

16 A It appears to me to be very small, in terms of
17 how we would go about measuring benefit, by the criteria
18 that have been discussed before the Tribunal in the past
19 proceedings, beyond that, I don't think I can really
20 comment.

21 CHAIRMAN BRENNAN: We will take our recess at
22 this point.

23 (Whereupon, a short recess was taken.)

24 CHAIRMAN BRENNAN: The hearing will resume.

25 Ms. Dowell?

1 MS. DOWELL: Mr. Senter is going to cross-examine
2 Dr. Lemieux.

3 CROSS-EXAMINATION

4 BY MR. SENTER:

5 Q Dr. Lemieux, I hope you will bear with me during
6 this cross-examination, I am not an expert in surveys, or
7 statistics. I am going to have a high learning curve this
8 morning. And I hope you will also bear with me if we get
9 into discussions of really small percentages, because as
10 you know, SIN is not claiming 15 percent or 20 percent, it
11 is only asking for a very small percentage, but those small
12 percentages are important to us.

13 I want to start though with this SIN-ABC rating,
14 you said during your testimony that you only have statistics
15 for the final game because the sweep week or the July
16 sweep month started right at the end of the World Cup
17 series, correct?

18 A Actually, no, what I said was with regard to
19 Commissioner Aguero's request, the only comparison between
20 SIN and ABC would have been for the final.

21 Q Were you aware that the only World Cup event that
22 ABC ran was the final?

23 A That's correct, that's why we have that data.

24 Q So, the other 51 games there was no duplication
25 of the signal over-the-air, commercial duplication of the

1 signal?

2 A I don't know that.

3 Q In response to a question, I think it was from
4 Commissioner Coulter, about the reliability of these Nielsen
5 surveys as far as the SIN affiliates you said -- something
6 to the effect that they have to do a credible job, because
7 advertisers rely on them. Are you aware whether Hispanic
8 advertisers to the Hispanic market at all rely on Nielsen
9 ratings?

10 A I don't know.

11 Q Would it surprise you to learn that they do not
12 rely on Nielsen ratings, that they rely on other surveys?

13 A I think it would depend upon what stations they
14 were buying, so I really can't answer that.

15 Q Did you attempt to determine whether Arbitron
16 had any data for these markets?

17 A No.

18 Q For example, for WXTV in New York, or for the
19 San Francisco station, or the Modesto station?

20 A No, I did not.

21 Q So, Arbitron may have had some data?

22 A They might have.

23 Q Were you aware that neither SIN, nor any of its
24 affiliates subscribed to Nielsen during 1982?

25 A I understood that from talking to people at

1 Nielsen, yes.

2 Q And Nielsen, basically, sells its information to
3 subscribers, right?

4 A My understanding is that Nielsen sells its
5 information to anybody who wants to buy it from them.

6 Q That's right, but it prepares it with its sub-
7 sscribers in mind.

8 A They report stations that do not subscribe,
9 otherwise, obviously we would not have any numbers for SIN.
10 So, if you are asking me do I think they bias their results
11 in favor of subscribers, the answer to that is no.

12 Q I am not saying they bias their results, but
13 they don't -- it is not necessary for them to pay as close
14 attention to SIN, which only gets a very small audience
15 because the subscribers aren't particularly interested in
16 that data, right?

17 A I couldn't answer that.

18 Q Are you aware that in Miami -- well, previously
19 you testified that only the Chicago and the L.A. markets
20 were metered, and the rest of these markets were based on
21 diaries?

22 A That is my understanding of 1982, yes.

23 Q And you recall previous testimony in these pro-
24 ceedings, including your own, about the reliability of
25 diaries over meters?

1 A We spoke about it with regard to the measurement
2 of cable television audiences, yes.

3 Q And what was your conclusion there?

4 A That with regard to the measurement of some kinds
5 of programming on cable, there is some evidence that
6 suggests that diaries are more inaccurate than meters.

7 Q Do you recall testifying, not that we should take
8 the Nielsen diary data for distant signal coverage with a
9 grain of salt, but rather than we should take it with a
10 shaker full of salt?

11 A I don't remember.

12 Q Directing your attention to your testimony before
13 this Tribunal in November of 1982, in the 1980 proceeding,
14 page 4654, lines 10 through 22, could you review that?

15 A (Perusing document)

16 Q Do you now recall testifying in response to the
17 question "Based upon your research which you have described
18 here and your own experience in the industry, what con-
19 clusions would you reach as to the accuracy of those
20 specific numbers?" And these were the MPAA viewing figures.

21 Do you recall responding, "I think they have to
22 be looked at with at least a shaker full of salt"?

23 A I recall reading that just now, yes. I think
24 also it says that -- if you read the entire text of the
25 question it refers to the fact that MPAA rather carried

1 out the calculations to a large number of significant
2 digits.

3 Q And you further testified that these numbers are
4 even more likely to be subject to a substantial amount of
5 error in their measurements of viewing, correct?

6 A I think you should finish the sentence.

7 Q That was the end of the sentence.

8 "We know that there are problems just in terms
9 of projecting samples of universes, but I think that the
10 kinds of problems that we have discussed here suggests
11 that these numbers are even more likely to be subject to
12 the potential of substantial amounts of error in their
13 measurement of viewing", that's the sentence, following
14 the one about the shaker full of salt.

15 A I believe that that was a discussion about the
16 reliability of diaries in measuring viewing to cable, yes.

17 Q So, when we get to the reliability of the data
18 measuring distant signal viewing, we will keep in mind that
19 we should consider that with a shaker full of salt, okay.
20 You don't have to respond to that.

21 MR. GARRETT: He doesn't have to respond to that,
22 I would appreciate you not asking the question.

23 May I have that testimony, please.

24 MR. SENTER: (Handing document)

25 BY MR. SENTER:

1 Q Are you aware that the Miami market is now metered
2 by Arbitron?

3 A I was not, but if you tell me it is, I will
4 believe you.

5 Q So, you would not be aware that the SIN affiliate
6 WLTV in Miami, subscribes to the Arbitron data, since it
7 has been metered -- since the market has been metered?

8 A I don't know that, no.

9 Q If I were to tell you that the Arbitron -- let's
10 assume hypothetically that the Arbitron metered Miami
11 market now shows that WLTV, the SIN affiliate in the
12 market, is the highest rated station between 6:00 and 8:00
13 a.m., has the highest rated local news, the highest rated
14 network news, and ties CBS during prime time --

15 MR. GARRETT: I will object to that question, Mr.
16 Chairman. I don't see what relevance that has to the
17 World Cup soccer telecast of 1982. And, furthermore, unless
18 he is going to introduce relevant evidence in this pro-
19 ceeding as to what he is assuming to be the case, I think
20 that is improper as well.

21 MR. SENTER: I just set up the question, I haven't
22 asked it yet.

23 CHAIRMAN BRENNAN: Pose the question.

24 BY MR. SENTER:

25 Q If we were to subsequently introduce that evidence

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1 that they subscribe, what would that tell you, would that
2 tell you anything about the comparative accuracy of this
3 prior diary method of measuring WLTW to the metered method?

4 A I think there are so many differences between
5 the methods, not only to talk about the differences between
6 Nielsen and Arbitron's methods of measuring audiences, that
7 I am not sure I could make any valid comparison between
8 the two.

9 Q Are you aware of criticism within the television
10 broadcast industry of the Nielsen and Arbitron measurement
11 of Hispanic audiences?

12 A I understand that SIN, in particular, has been
13 critical, yes.

14 Q Are you aware that ABC itself has been critical?

15 A I don't know that.

16 Q You are not aware that KABC, the ABC owned and
17 operated system in L.A., Los Angeles, has complained to
18 Arbitron that it under-measures Hispanic audiences?

19 A I believe I read something about that in the
20 trade paper not too long ago, but this is not an area that
21 I follow particularly closely.

22 Q So, really you are not expert in Nielsen's
23 measurement of Hispanic audiences, because you don't follow
24 the area closely, and you are not aware of some of the
25 industry criticism?

1 A I am broadly aware that there is criticism. You
2 are asking me do I testify my ability to represent these
3 numbers, and the answer to that is yes, I think I can read
4 a rating book as well as anybody else.

5 Q You can read the rating book, but you can't
6 testify as to the credibility of the underlining numbers
7 themselves, other than to say, as you did, "Well, Nielsen
8 must be credible because a lot of people rely on it"?

9 A I have not made a detailed study of the Nielsen
10 methodology for measuring Hispanic audiences, so I really
11 cannot testify to that as a professional.

12 Q Do you have in front of you the Joint Sports
13 Phase II Exhibit 4?

14 A (Perusing documents) Yes, I do.

15 Q Oh, excuse me, let me ask you one thing before
16 I turn to that. Do you know what the typical rating for a
17 UHF independent station using the Nielsen in major markets
18 is?

19 A It varies quite a lot in some markets they get
20 double digits, in some markets they get single digits.

21 Q So, it is not uncommon, for example, for a UHF
22 English language independent to have a five rating in a
23 major market?

24 A In certain times of day, I am sure.

25 Q Overall, as an average?

1 A Probably, yes.

2 Q If your counsel could provide you with the summary
3 volume of the Nielsen Special Research Report --

4 MR. GARRETT: (Handing document)

5 BY MR. SENTER:

6 Q If you could turn to -- you are familiar with
7 this document, are you not?

8 A I have examined it briefly, yes.

9 Q Would you turn to the last section of -- the
10 first page of the last section?

11 A (Perusing document) Are you talking about the
12 four-cycle summary section?

13 Q Right, the four-cycle summary section. Directing
14 your attention to station KHJ, that is a VHF English
15 language independent in Los Angeles, is it not?

16 A Yes, it is.

17 Q And do you know how to read this, I am not sure
18 I do -- what is the average household viewing, and this is
19 on the distant signal carriage, of KHJ-VHF independent
20 English language during the four cycles?

21 A It appears to average 6,000 households.

22 Q Now, directing your attention to page one, but
23 it is the next to the last page of the study.

24 A The one with the KMEX entry?

25 Q Right. What is the average household viewing on

1 a distant signal basis for KMEX, UHF, Spanish language
2 station?

3 A It is 5,000 households.

4 Q That doesn't tell us very much, does it, once we
5 know the number of subscribers that these systems reach,
6 about how well those two stations are doing comparatively,
7 right?

8 A If you phrase the question that way, the answer
9 to that question probably is yes.

10 Q So, KHJ we know reaches, according to this, 6,000
11 -- on the average, 6,000 distant signal subscribers during
12 the four cycles, and KMEX reached 5,000. Now, this study
13 measures only Form 3 systems, correct?

14 A The one from --

15 Q The Nielsen Study?

16 A No, the Nielsen Study measures all viewing by
17 cable viewers, anywhere in the country. My understanding
18 is that the MPAA selected stations on the basis of their
19 Form 3 carriage.

20 Q Excuse me, directing your attention to page A-6
21 the study methodology.

22 A Yes.

23 Q Look at the first sentence of that, it says it
24 measures distant signals by Form 3 cable systems.

25 A That is the sample of stations, yes, but not the

1 sample of households. The sample of households is all the
2 households in the United States.

3 Q All cable households in the United States?

4 A Yes, they use all of the diaries.

5 Q All right, I see. Well, let's direct our attention
6 just to Form 3 carriage of KMEX and KHJ, because that is
7 the only data I have. And you have already testified it
8 will account for probably 90 percent of the viewing anyway.

9 MR. GARRETT: I'm sorry, he testified, what?

10 MR. SENTER: It will account for 90 percent of
11 the -- approximately 90 percent of the subscribers.

12 MR. GARRETT: You said viewing before.

13 MR. SENTER: Excuse me, subscribers.

14 BY MR. SENTER:

15 Q Directing your attention to Revised SIN Exhibit
16 2, Form 3, page 2, it shows there that KMEX reached
17 504,158 distant signal subscribers.

18 A That appears to be the number, yes.

19 Q And your counsel has been so kind as to provide
20 me with the Form 3 full-time distant signal subscribers
21 reached by KHJ, and he qualified this by saying that it
22 may not be entirely up-to-date, it may only be 90 percent
23 accurate, but it shows that KHJ reached 622,017 subscribers.

24 MR. GARRETT: Let me just clarify a point, I did
25 provide Mr. Senter and Ms. Dowell with certain information

1 from an earlier study done by Mr. Larson, they requested
2 the information late Friday evening, and I gave them the
3 best numbers that I had. I did not say that KHJ, in
4 particular, was 90 percent accurate; I said that Mr. Larson
5 had represented at the time that he had done the study and
6 given me those figures that it was approximately 90 percent
7 accurate.

8 I have no idea whether the numbers with respect
9 to KHJ are accurate to a particular degree, indeed, in any
10 particular respect whatsoever.

11 MR. SENTER: Would you say, Mr. Garrett, that it
12 is probably, if it is inaccurate, it is more likely under-
13 stated, than over-stated?

14 MR. GARRETT: I cannot say, one way or the other.

15 BY MR. SENTER:

16 Q Well, based on the figures that we have, the
17 best information that we have, it shows that KHJ has
18 622,017 subscribers, approximately, maybe a little bit more
19 than 20 percent -- it reached a little bit more than 20
20 percent more distant signal subscribers than KMEX, correct?

21 A If you say so, yes.

22 Q And you recall earlier, we were reviewing the
23 summaries and it showed that KHJ reached, on the average,
24 quarter-hour basis, 6,000 distant signal households and
25 KMEX reached 5,000; in other words, KHJ reached about 20

1 percent more than KMEX. Would it be fair to say, therefore,
2 that on a distant signal basis, accepting the validity of
3 the Nielsen diary method of measuring distant signal view-
4 ing, that KMEX is just about as popular as KHJ-VHF English
5 language independent?

6 A Across the entire broadcast year, all times of
7 day, on a distant signal basis where the VHF-UHF distinction
8 doesn't really matter, yes.

9 Q But it does matter, the VHF-UHF distinction, when
10 you are measuring ABC against KMEX in L. A., right?

11 A That depends, in part, I think on the distant
12 signal carriage of KMEX by other cable systems in the DMA.
13 I understand what you are asking, does the VHF signal have
14 a wider range of dispersion, and the answer to that is, yes,
15 it might, but the other part of that, of course, is there
16 may be distant signal carriage of KMEX in a market that
17 expands its carriage as well. So, I can't actually answer
18 the question, do they have similar coverage areas.

19 Q When Nielsen measures KMEX -- Nielsen doesn't have
20 an ADI, that is an Arbitron --

21 A A DMA. I think for Los Angeles they are basically
22 the same geographic area.

23 Q Would Nielsen have different DMAs for different
24 stations, depending upon the quality of the signal?

25 A Different from what?

1 Q DMA.

2 A Compared to?

3 Q Well, compared to the ABC --

4 A You mean, in the same market area?

5 Q Yes.

6 A No.

7 Q You testified that there was over-the-air signal
8 duplication as to KMEX distant signal carriage in the Los
9 Angeles ADI, particularly in Oxnard and Ojai, because those
10 -- well, is Oxnard a county, or is that in Ventura County?

11 A That is the name of the cable system on the
12 record.

13 Q What you are saying is that Oxnard and Ojai are
14 local to KMEX, the signal is received off-the-air there?

15 A No, what I am saying is they are located in what
16 Arbitron defines as the market area for Los Angeles, but
17 that because they are at some distance removed from KMEX,
18 they fall outside the 35-mile zone. And, therefore, the
19 signal carriage by the cable operator constitutes distant
20 signal carriage by the FCC's rules, even though it may
21 still be within the Arbitron defined market area.

22 Q But that doesn't mean that the signal is
23 receivable there?

24 A On an off-the-air basis?

25 Q Right.

1 A Of course not, it could come in by microwave
2 or otherwise.

3 Q Directing your attention to the summary report
4 again, page A22.

5 A (Perusing document) I'm sorry?

6 Q A-22. The first entry on that page KMEX, and
7 the way I read this is in doing the distant signal survey,
8 Nielsen considered local signals everything within a
9 station's DMA, which is Nielsen's equivalent of the ADI,
10 except in the case of KMEX, it excluded three counties and
11 half of another?

12 A That's right.

13 Q For what reason did Nielsen exclude those counties
14 from the KMEX local market?

15 A My understanding, from reading the description
16 provided by Nielsen and MPAA of the methodology, was that
17 in those cases KMEX was considered to be -- those pre-
18 sumably must be situations where KMEX was not -- there
19 are a lot of reasons why this could be the case. My best
20 guess is that it is probably because in those four counties
21 KMEX was not, quote, "significantly viewed" with regard to
22 the 1982 cable report, and therefore, does not permit
23 carriage on a local basis, as compared, for example, to
24 KNXT, which also presumably has the same 35-mile zone, but
25 no doubt was significantly viewed because it was a CBS

1 affiliate at the time of the cable report.

2 Q Stations can establish significant viewership
3 currently, can't they, they are not bound by the 1872
4 report and order?

5 A That is my understanding, yes.

6 Q But it would be difficult to establish significant
7 viewership in a county that your signal did not reach?

8 A I have no knowledge as to whether KMEX has
9 attempted to demonstrate significant viewing, or not.

10 Q I have here a map in Television Digest and Cable
11 Coverage Atlas, used by cable systems and television
12 stations to determine "must carry" and "distant signal"
13 carriage. Would you indicate the KMEX signal on there
14 and tell me where it is in relation -- and that is a Grade
15 B signal, that's the limits of reliable receivership under
16 FCC rules. Can you tell me where the KMEX signal reaches
17 in relationship to Oxnard?

18 A (Perusing document) In relation to Oxnard.
19 It appears to cut directly through the city of Oxnard.

20 Q So, the city of Oxnard is right on the edge of
21 the FCC Grade B projected reliable contour, according to
22 this?

23 A According to that map.

24 Q These are predicted contours, correct?

25 A That is my understanding, yes.

1 Q They don't take into consideration terrain,
2 beyond 10-miles from the transmitter?

3 A I don't know that.

4 Q So, you don't know whether they would take into
5 consideration the mountain range that lies between Hollywood
6 and Oxnard, but is more than 10-miles from the KMEX
7 transmitter?

8 A I must say I am neither an engineer, nor am I
9 acquainted with the geography of the Los Angeles station.

10 Q All right. So, your testimony that -- at least
11 as to the cable system in Oxnard that carried KMEX as a
12 distant signal carriage, that because it was in the Los
13 Angeles ADI doesn't mean that KMEX was receivable over-the-
14 air in Oxnard?

15 A The contour line goes through the city, and one
16 would expect that some people had at least Grade B contour
17 coverage.

18 Q But you are not an engineer and you can't take
19 into consideration the terrain --

20 A Nor have I sat in Oxnard and tried to watch it
21 over-the-air.

22 Q Let's turn now to Joint Sports Exhibit 4-A.

23 A (Perusing documents)

24 Q Would you just summarize for me what this
25 exhibits establishes for Joint Sports?

1 A If you compute the fraction of all viewing that
2 is calculated from the MPAA-Nielsen Study, accumulated
3 together, all the programs that were owned by Joint Sports
4 Claimants and the SIN World Cup, of that cumulative total,
5 the SIN World Cup accounted for .03 percent of the entire
6 viewing in the study.

7 Q Now, as to the Joint Sports figure, this HHRS
8 figure, that is household hours?

9 A That is correct.

10 Q That figure is not in any of these survey
11 volumes that are sitting on Mr. Garrett's desk?

12 A No, that was calculated for us by the MPAA.

13 Q And you didn't double-check its reliability?

14 A No, I have to admit, I did not count up the
15 161 million-plus hours.

16 Q Is it your understanding what that figure does
17 is total up the viewing for all programs type 5-MS?

18 A I believe so.

19 Q I have here a copy of a portion of the May '82
20 Nielsen results for WTBS, and it has a program listed as
21 daytime baseball, and it shows it lasted two-quarters of
22 an hour, it is type 5-MS, is that a baseball game?

23 A Yes, it is.

24 Q And it lasted two-quarters of an hour?

25 A Well, if you look more carefully, you see that

1 it is actually appearing in a number of different quarter
2 hours, that is it appears for Tuesday, quarter-hour 37;
3 Tuesday quarter-hour 39 and Tuesday quarter-hour 41, and
4 perhaps Tuesday quarter-hour 35. So, it had two, four, six,
5 eight quarter-hours on that Tuesday.

6 Q So you have to total that up to get one indivi-
7 dual baseball game?

8 A It varies according to how Nielsen has coded the
9 data on certain programs.

10 Q How does Nielsen code the data for certain pro-
11 grams?

12 A You mean in this particular study?

13 Q Yes.

14 A It is typically by program title, but sometimes
15 the programs are broken up into small segments, and I
16 believe that depends upon the day part.

17 Q Your explanation made a lot of sense, but I am
18 confused here. Here is a portion of the May survey for
19 WGN and it shows Cub baseball one-quarter of an hour in
20 31 quarter-hour, but there is no 32 quarter-hour there.

21 A Yes, I see that.

22 Q Could it be a pre-game show?

23 A (Perusing document) No, it is not the pre-game
24 show. There could have been a rain delay, I really can't
25 tell from reading this.

1 Q Something is missing from there, right?

2 A There is a quarter-hour between the first quarter
3 hour of the game and the third quarter-hour of the game,
4 and it is not listed to be a Cubs game.

5 Q Now, what is this SMS type and category that
6 Nielsen and MPAA worked out, what does that include?

7 A My understanding is it includes professional
8 sports from the four professional leagues included in the
9 Joint Sports Claimants', plus all of the events from the
10 NCAA.

11 Q Live games or taped games?

12 A I believe both.

13 Q Both live and taped?

14 A You are asking me with regard to, for examples,
15 replays on WTBS?

16 Q Yes.

17 A Yes, it includes those.

18 Q So, these figures, this figure up at the top with
19 the total Joint Sports household hours includes taped
20 programs?

21 A Yes, it does.

22 Q Now, how was this 54,585 hours for SIN World Cup
23 arrived at?

24 A We went through the four volumes and found all
25 the instances of World Cup carriage and applied the same

1 formula and then we multiplied the number of quarter-hours
2 telecast times the average quarter-hour audience. And
3 dividing by four you get hours again.

4 Q So this figure only includes World Cup games?

5 A It includes World Cup games and also the replays
6 of World Cup games in the November sweep period.

7 Q Does it include all replays of World Cup games?

8 A All the ones that we could find under the title
9 Best of the World Cup for November. Are you asking me
10 about July or November?

11 Q Who types and titles the KMEX programming?

12 A A. C. Nielsen. Actually, can I revise that?
13 A. C. Nielsen does the titles and the MPAA and Nielsen, it
14 is my understanding, jointly typed the programs.

15 Q Directing your attention to the Nielsen Survey,
16 page A-39.

17 A (Perusing documents) Yes.

18 Q The last sentence of that first paragraph, Program
19 typing was not required for stations KMEX, or WNJU, the
20 two Spanish language stations.

21 A Yes, I see that.

22 Q So, how were they typed?

23 A They were typed 8HS.

24 Q There was no attempt made to break out whether
25 it was really the World Cup, or --

1 A That's not true, in the individual program-by-
2 program listings there are listings by program title, but
3 in terms of typing with regard to claimants, all the
4 Hispanic programming was labeled "Hispanic".

5 Q I direct your attention now to the July 1982,
6 sweep survey, particularly for WNJU, which is entirely
7 typed Hispanic. I have highlighted some programs there,
8 the first one is called Greek Program, it is typed Hispanic,
9 is it not?

10 A It appears to be.

11 Q The second one is Greek Show, Hispanic?

12 A I am not responsible for these typings, so I
13 can't -- I can read them to you.

14 Q An Italian Show, Japanese News, Korean Theatre --
15 all typed Hispanic?

16 A Well, I think that is probably of benefit to your
17 claim.

18 Q Look at that, WNJU carried World Cup Soccer,
19 typed Hispanic; SIN, which has a Spanish language affiliate
20 in New York, so World Cup Soccer in Spanish language to
21 its competitor?

22 A No, they got the games from ESPN, I interviewed
23 them about that this week.

24 Q What if I were to tell you that they purchased
25 the Italian rights from SIN, and it is an Italian show?

1 A My understanding from talking to the WNJU manage-
2 ment last week was that they had bought the games from
3 ESPN, that is the only information I have on the subject.

4 Q And ran it in Spanish?

5 A I don't know what language they ran it in.

6 Q Who did you get that information from?

7 A From the programming department at WNJU.

8 Q The name of the person?

9 A I would have to go back, I really don't know.

10 Q Could you provide that information for us?

11 A I don't think I actually got the name of the
12 person I spoke with, I could go see, but I don't remember
13 doing so.

14 Q Well, the typing for WNJU is not very reliable,
15 is it?

16 A Apparently not with regard to whether or not it
17 is Hispanic.

18 Q So, directing your attention to your Exhibit 4-C,
19 other Hispanic programming in Nielsen-MPAA Study, which
20 includes the programming, typed I think it was 8HS, for
21 KMEX and WNJU?

22 A Yes.

23 Q It must include some non-Hispanic programming?

24 A It apparently does. I might point out though
25 that if you take out WNJU, and you recalculate the total,

1 it drops the total from 10,635,000 household hours, down
2 to only 10,250,000 household hours, because in the Nielsen
3 Study, WNJU has extremely small audiences throughout --
4 in fact, 87.4 percent of the figure of Hispanic programming
5 there is on KMEX.

6 Q That is interesting, they included WNJU in there
7 but it doesn't really have a significant audience, does
8 it?

9 A Well, it has the 1,000 households that they appear
10 to report on an average basis.

11 Q Why didn't they include WXTV, the New York
12 SIN affiliate?

13 A From what I understand, it didn't meet the
14 requirements that they had for cutting off stations.

15 Q Let's turn to those requirements, page A-6 of
16 the Nielsen Sample.

17 A (Perusing documents) Yes.

18 Q The station had to be a US commercial television
19 broadcast station, WXTV is a US commercial television
20 broadcast station, is it not?

21 A I believe so.

22 Q It had to have been carried as a full-time distant
23 signal by Form 3 cable systems during 1982. It was, was
24 it not?

25 A Yes, it was.

1 Q The system must have been carried as a full-time
2 distant signal by cable system subscribers serving an
3 aggregate total of at least 200,000 subscribers determined
4 by combining statement of account data for the two account-
5 ing periods in 1982, of which at least 100,000 subscribers
6 were attributable to the second accounting period alone.

7 In other words, you take accounting period one
8 subscribers and accounting period two subscribers, total
9 them, and if they come up to more than 200,000 and you had
10 more than 100,000 the second time, you include it, right?

11 A That appears to be what the MPAA's methodology
12 was, yes.

13 Q Directing your attention to Revised SIN Exhibit
14 2, if you will turn to page 3 and page 4.

15 A (Perusing document)

16 Q It shows that during the second period WXTV had
17 161,510 full-time subscribers.

18 A This is on Form 3 now?

19 Q Yes, on Form 3.

20 A Okay.

21 Q Correct?

22 A That's what it says, yes.

23 Q Don't you think it is likely they had 40,000
24 during the first period, too?

25 A I really can't say, I haven't seen the numbers.

1 Q What if we got Mr. Larson to provide the numbers
2 and they showed that they had 40,000 which is fairly likely
3 since they had 160,000 the second period, then it should
4 have been included in this survey, right?

5 A I think you ought to ask Mr. Cooper from the MPAA
6 that question.

7 Q Well, Mr. Scheiner and Mr. Cooper don't talk to
8 us, they told us this data wasn't available. Mr. Scheiner
9 told us it wasn't even done for '82. So, we are just small
10 guys -- KMEX was included in this study, that is an SIN
11 affiliate.

12 Can we make some projections as to carriage by
13 the other distant signal viewing of the other SIN affiliates,
14 on the basis of this Nielsen Study?

15 A I think you need to ask the question more
16 specifically for me to answer that.

17 Q Well, I will just direct your attention to A-38
18 of the survey, where Nielsen says, "Estimates reported
19 herein do not apply to other stations failing to meet the
20 stated criteria". So, this is only, if it is of any
21 worth, it is only of worth as to KMEX, correct?

22 A It only gives us information about KMEX's
23 coverage, yes.

24 Q We can't make any inferences from it about the
25 coverage of the other seven SIN affiliates that were carried

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1 as distant signals?

2 A The only counterpoint to that is the fact that
3 carriage of KMEX accounted for over 60 percent of all the
4 distant subscribers on a Form 3 basis.

5 Q That's an interesting point to make, it accounted
6 for, you say, over 60 percent of the subscribers. How
7 many Joint Sports flagship stations were in the Nielsen
8 Survey?

9 A I think -- bear with me for a moment -- (perusing
10 documents) -- 33.

11 MR. SENTER: I am handing out an exhibit which
12 is a Xerox of a list of Joint Sports flagship stations
13 provided to me by your counsel. In fact, you have done the
14 same thing I have done, and that is mark the stations that
15 were included in the Nielsen Survey. If you total those
16 up out of the 53 flagship stations, 33 were in the Nielsen
17 Survey, correct?

18 THE WITNESS: That is my count, yes.

19 (Whereupon, the document was marked
20 for identification as SIN Exhibit 11)

21 MR. SENTER: I would move its admission at this
22 time.

23 CHAIRMAN BRENNAN: It will be received.

24 (Whereupon, SIN Exhibit 11 was received
25 into evidence.)

1 MR. SENTER: I am now handing you a document
2 marked SIN Exhibit 12, it is the number of Form 3, 1982
3 cable subscribers to Joint Sports flagship stations. This
4 is the information provided to me over the telephone by
5 Mr. Garrett, and I acknowledge that it may not be entirely
6 reliable.

7 (Whereupon, the document was marked
8 for identification as SIN Exhibit 12)

9 BY MR. SENTER:

10 Q Now, I don't want you to do any fast addition,
11 if you will accept it, I will tell you that of the total
12 flagship stations, if you add up all of these subscribers,
13 it is 56,170,170. If you take --

14 A That includes duplication of signal?

15 Q That includes duplication, that's right. And if
16 you take the systems marked on SIN Exhibit 11 as being
17 included in the Nielsen Survey, the total cable subscribers
18 reached on a distant signal basis by those stations is
19 55,284,836; a 98.42 percent of the Joint Sports distant
20 signal subscribers were included in the Nielsen Survey.

21 A I don't know if that is true on an unduplicated
22 basis, but I will accept your figures.

23 Q On a duplicated basis. And as you testified,
24 only 60 percent of the SIN subscribers were included in
25 the Nielsen Survey, but you thought that was a pretty fair

1 example.

2 A I think it also shows the relative popularity of
3 Joint Sports Claimants' programming.

4 Q On what basis, the fact that they were included
5 in the survey?

6 A On the basis that they are widely received and,
7 thus, included in the survey.

8 Q WXTV should have been included in the survey,
9 based on the testimony we have had today, the survey is
10 what MPAA wants it to be, isn't it?

11 A I can't answer that question, Mr. Senter.

12 Q Do you know how many of the Joint Sports Claimants'
13 sports events were covered by the four cycle sweeps in
14 the MPAA-Nielsen Survey?

15 A No, I don't.

16 Q Well, it covered four months of the year, correct?

17 A Yes.

18 Q A third of the year?

19 A Yes.

20 Q Joint Sports events, which included baseball,
21 professional basketball, hockey, NCAA football, NCAA
22 basketball, professional soccer -- you look at them as
23 a total, that is fairly evenly distributed throughout the
24 year, are they not?

25 A Not necessarily in the telecasting patterns, no.

1 In fact, a lot of them are telecast in non-sweep months.
2 Baseball, for instance, is heavily telecast in August and
3 September, as the pennant races heat up, more than it is
4 in the early part of the season. So, it is not likely to
5 appear in the May and July books as often as it should
6 appear, and if you measured it in August and September.

7 Q Is it heavily televised on the network, or on
8 an independent basis?

9 A An independent basis, by originating stations.

10 Q Well, could we make any -- so, you wouldn't agree
11 if we said maybe 33 percent of the Joint Sports events
12 were included in the survey?

13 A No, I wouldn't agree with that.

14 Q What would be your best guess?

15 A I really can't say. I believe it is lower than
16 that.

17 Q Much lower?

18 A As I say, I can't answer that, I haven't summed
19 them up.

20 Q What percentage of SIN's live World Cup events
21 were included in the survey?

22 A Are you counting telecasts?

23 Q No, live events that were telecast, the live
24 World Cup events?

25 A I believe you have 52 events; I think there are

1 three.

2 Q Three out of 52? Or 5.8 percent of the SIN games?

3 A I will accept your calculation of percentage.

4 Q Certainly more than 5.8 percent of the Joint
5 Sports sporting events were included in one-third of the
6 year?

7 A Well, we did try to estimate coverage for WTBS,
8 which in Sports Exhibit -- Joint Sports Exhibit 6, and the
9 attached printout, you will see that there are 188 tele-
10 casts of major league baseball on WTBS, and we calculated
11 -- we counted in the Nielsen Study that 36 of those tele-
12 casts are included, which is only about 20 percent of the
13 total coverage of major league baseball on WTBS. And that
14 is the only number I have that is comparative here.

15 Q Let's do a comparison of the Nielsen Survey as
16 it applies to SIN, and this applies to Joint Sports, too.

17 MR. SENTER: Let's mark this SIN Exhibit 13.

18 (Whereupon, the document was marked
19 for identification as SIN Exhibit 13)

20 BY MR. SENTER:

21 Q This exhibit shows a Nielsen-MPAA Survey included
22 5.8 percent, three out of 52 of the live World Cup events,
23 telecast by SIN. And you say it also shows 33 percent of
24 the Joint Sports games, but I think maybe 20 percent would
25 be a more accurate figure.

1 A It could even be lower, I don't know. The only
2 number I have is 20, and that is just for one particular
3 sport on one particular station.

4 Q So, you don't even feel comfortable with 20?

5 A As I say, I haven't done the count, so I am not
6 willing to endorse any particular number.

7 Q See if you agree with this number, 12.5 percent
8 of the SIN affiliates carried on a distant signal basis
9 were included in the survey, correct, one out of eight?

10 A Yes, that's true.

11 Q 62 percent of the Joint Sports flagship stations
12 were included in the survey, correct?

13 A Is that 36 out of 53?

14 Q Right.

15 A Okay.

16 MR. GARRETT: I'm sorry, what percentage?

17 MR. SENTER: You have already testified approxi-
18 mately 60 percent of the SIN distant signal subs were
19 included in the survey; but 98.4 percent of the Joint
20 Sports distant signal subs were included in the survey,
21 correct?

22 THE WITNESS: I have also testified that I don't
23 think that those numbers are comfortable, because they
24 don't account for duplications. The 60.3 percent number
25 for SIN is unduplicated.

1 BY MR. SENTER:

2 Q I counted the duplication.

3 A I don't know, there are a lot more duplications
4 in the case of the Joint Sports.

5 Q A lot of duplication, let's remember that. SIN
6 affiliates account for one out of 89 stations in the sample,
7 1.1 percent; Joint Sports flagship stations, 33 of them
8 were included in the sample out of 89, accounting for
9 37 percent of the sample.

10 Just looking at this chart, wouldn't you say
11 that the sample is heavily weighted in favor of the Joint
12 Sports flagship stations?

13 A There certainly are a lot more flagship stations
14 in the sample than there are SIN stations.

15 Q But in every respect SIN is under-represented,
16 in terms of the number of games included, in terms of the
17 number of stations surveyed, the subs?

18 A I would not use the word under-represented. There
19 are fewer SIN affiliates than there are Joint Sports
20 flagships, I will agree to that..

21 Q But if you look at the percentage of affiliates?

22 A Since the study was not designed to comparatively
23 represent either SIN or Joint Sports Claimants with regard
24 to their stations it is hard to talk about them being
25 proportionately, or under-represented, or whatever you want

1 to term it, the representation of their signals.

2 MR. GARRETT: Let me ask a question, this is SIN
3 Exhibit 13?

4 MR. SENTER: Yes, I move its admission.

5 CHAIRMAN BRENNAN: It will be received.

6 (Whereupon, SIN Exhibit 12 and 13
7 were received in evidence)

8 MR. GARRETT: This refers to JSC flagship stations?

9 MR. SENTER: JSC flagship stations.

10 MR. GARRETT: Of the professional sports games?

11 MR. SENTER: And the NCAA teams.

12 MR. GARRETT: With respect to three stations?

13 MR. SENTER: It only includes the flagship
14 stations on your list.

15 MR. SENTER: If we included other stations that
16 ran NCAA games, a greater percentage of the Nielsen sample
17 would be sports --

18 THE WITNESS: That is not true, there are over
19 500 stations, nowhere near that number is going to be added
20 to the list in the MPAA study.

21 BY MR. SENTER:

22 Q But if it is five or six, or seven, it is only
23 going to increase Joint Sports representation in the
24 sample, correct?

25 A But not proportionate to the number -- I mean,

1 that 62 percent figure is going to become much, much
2 smaller.

3 Q That's right. And stations that are excluded
4 are the ones that didn't have what Nielsen and MPAA con-
5 sidered significant distant signal carriage?

6 A What MPAA considered.

7 Q Right, okay. Directing your attention now to
8 Joint Sports Exhibit 4-B.

9 A (Perusing documents)

10 Q Of course these statistics are based on statistics
11 in 4-A, that we have just been discussing?

12 A They are based on the entries in the Nielsen
13 book for that-- the same set of entries in the Nielsen book
14 underlie 4-A and 4-B. One can't derive 4-B and 4-A directly.

15 Q To determine the SIN's World Cup share of viewing,
16 you include the rerun World Cup series, correct?

17 A The events in November, yes.

18 Q That were reruns?

19 A Right.

20 Q And you include the programming throughout the
21 entire year, correct, even for those months where there was
22 no World Cup, or even rerun programs, correct?

23 A In terms of what?

24 Q In terms of share of viewing and share of time?

25 A You mean in the denominators?

1 Q Yes.

2 A In the denominator is the entire year for all
3 89 stations, or more accurately, the 16 sweep weeks.

4 Q What does this tell us if the denominator is
5 all stations, does this tell us that SIN's World Cup view-
6 ing, in terms of the percentage of all distant signal
7 viewing was small?

8 A On the 89 stations in the study, yes.

9 Q We knew that. It tells us the share of time
10 was .97 percent?

11 A No, .0097 percent.

12 Q Excuse me, .0097 percent, which is relatively
13 small but then you are taking KMEX, one SIN affiliate and
14 comparing it to this universe of 89 stations, correct?

15 A That's correct.

16 Q If you wanted to determine the relative popu-
17 larity of the World Cup in SIN's audience, which is not
18 English speaking, it is Spanish speaking predominately,
19 wouldn't it be more appropriate to compare the viewing of
20 the World Cup as against other KMEX viewing?

21 A My understanding is the purpose of this proceed-
22 ing is to decide what share of the sports royalty award
23 should go to SIN. Therefore, it seems to me the comparison
24 ought to be between the contribution that the World Cup
25 made in terms of sports to the value that operators attached

1 to distant signal programs, compared to the value that they
2 attached to all sports programming.

3 Q Well, it seems to me this shows that you are
4 saying here that the disproportionately small percentage of
5 viewing of the World Cup compared to its share of time
6 shows that the programming was not popular?

7 A Compared to most programming in the study, yes.

8 Q If it were competing against English language
9 programming?

10 A It is compared to the rest of the programming
11 in the study, whatever language it is. I am perfectly
12 willing to stipulate that a lot of it is English language.

13 Q Let me show you another chart --

14 CHAIRMAN BRENNAN: We will give you the luncheon
15 recess to prepare your chart.

16 We will recess until 2:00 p.m.

17 (Whereupon, the luncheon recess was taken at
18 12:35 p.m., to reconvene at 2:00 p.m.)

19

20

21

22

23

24

25

AFTERNOON SESSION

(2:10 p.m.)

CHAIRMAN BRENNAN: The hearing will resume.

Mr. Senter.

BY MR. SENTER:

Q Dr. Lemieux, let's take a different tact for about 30 minutes than we took this morning. Let's assume that the Nielsen data is infallible and it is very accurate, and let's see what other sorts of useful information we can obtain from that and try to get your comments on it.

If I recall your testimony correctly, with respect to WNJU, one, we've established it is not an all Hispanic station, notwithstanding the typing in the Nielsen, and it really doesn't even account for very much of the household viewing anyway, that the bulk of the household viewing in your Exhibit 4C is attributable to KMEX.

A That's correct.

Q So, with that in mind, I'd like to just consider KMEX our Hispanic universe, and see what kind of comparisons we can make.

By the way, I've distributed, at Commissioner Aguero's request, I had these charts typed up, and I've already distributed SIN Exhibit 12, and also an exhibit marked SIN Exhibit -- excuse me -- I've distributed Exhibit 13 and an exhibit marked 14.

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(Whereupon, the document was
marked SIN Exhibit No. 14
for identification.)

Now, this exhibit accepts the premise that it's
important to see, for the sports programming, how the share
of viewing compares to the share of time, and so it looks
at KMEX during the month of July, which was the only month
during which live World Cup events were broadcast.

By the way, you are aware that in our subscriber
events formula, that SIN did not include any of the repeats,
any of the Best of the World Cup.

A I believe so.

Q It's just the live events that were included in
the formula. We would agree that the repeats are substan-
tially less valuable as sports events than a live program.

MR. GARRETT: May I just ask a question? Is there
a claim being made for those repeats, or not?

MR. SENTER: There's a claim being made, but we
admit it's very difficult to place a value on repeats, so
that they would not have the same amount of value that the
live sports program would.

MR. GARRETT: Just so I understand and the record
is clear, you are claiming for the repeats as well as the
live telecasts?

MR. SENTER: Right, but did not include them in

3
1 the formula because we acknowledge that you can't equate
2 a repeat to a live programming, when you are looking at
3 least an event like subscriber events which assumes that
4 every program has equal value.

5 So we are just taking the month of July for
6 KMEX. Now this chart shows that World Cup accounted for
7 2.3 percent of the share of the viewing during the month
8 of July -- that translates into 17,442 quarterhours out
9 of a total of 748,834 quarterhours, but it only accounted
10 for --

11 THE WITNESS: I'm sorry, could you repeat those
12 numbers again?

13 BY MR. SENTER:

14 Q 17,442 quarterhours of viewing for the World
15 Cup.

16 A That's 4,000 hours.

17 Q Right. 4,000 hours, about.

18 A You mean household hours.

19 Q Yes, household hours. About 4,000 household
20 hours.

21 A You said hours, and I was --

22 Q It was 17,000 that was quarterhours, and it
23 would be about a little over 4,000 household hours, and
24 the total viewing in terms of quarterhours was 748,834,
25 and to get the household hours, you divide that by 4, of

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4

1 course.

2 And it compares that to the share of time that
3 World Cup had during the month of July, which is 1.4
4 percent, 27 hours out of -- 27 quarterhours -- excuse me --
5 out of a total of 1,992 quarterhours, for a ratio of view-
6 ing to time of 1.6 to 1.

7 Now would you attach any significance to those
8 figures in terms of valuing sports events?

9 A From having looked at the data, it's pretty
10 clear to me that that's because the final game got such a
11 large quarterhour audience.

12 Q And this was the final game when you could also
13 watch it in English on ABC?

14 A That's correct.

15 Q So it included two other games, but none of the
16 preceding 49 games.

17 MR. GARRETT: Mr. Chairman, I know the Tribunal
18 has been very liberal in allowing people to create their
19 own exhibits on cross-examination and giving them to the
20 witnesses to testify about while counsel explains what it
21 is that's been done. I'm not going to question that
22 procedure here, however, I have just got this. I have not
23 had a chance to go through these numbers. My quick calcula-
24 tion suggests that there may be something wrong, but I
25 just want it clear for the record that we are not stipulating

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1 to the accuracy of any of these numbers here, for the
2 time being.

3 I will check it at the recess and will let you
4 know if there are any problems.

5 BY MR. SENTER:

6 Q Another useful comparison may be to compare
7 sporting events. You are, correct me if I'm wrong, claiming
8 for sports team, for the copyright they held in local games
9 that were carried as a distant signal?

10 A For the team's games --

11 Q The individual teams themselves.

12 A -- and games that were encompassed in the claim
13 made by the Joint Sports Claimants.

14 Q Now I have placed in front of you an exhibit,
15 and let's mark it for identification SIN Exhibit 15.

16 (Whereupon, the document was
17 marked SIN Exhibit No. 15
18 for identification.)

19 This exhibit takes the Nielsen viewing data --
20 and if you want, you can turn to the July sweep survey,
21 both of these games occurred in the July sweep survey,
22 to get the underlying information. There is a Cosmos,
23 a New York soccer game carried by WOR, to the World Cup
24 carried on WGN -- KMEX.

25 If you took the three World Cup games, you'd get

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1 an average household of 666. If you took the two Cosmos
2 games, you'd get an average household of 1,630.

3 MR. GARRETT: You say 666, but your chart shows
4 646.

5 BY MR. SENTER:

6 Q 646.

7 A Actually, I think, Mr. Senter, it's missing a
8 zero in both cases. The Nielsen data is presented in tens.

9 Q Okay. I wasn't aware of that. So, that won't,
10 though, affect --

11 A It doesn't affect the relationships.

12 Q -- the ratios, but it would affect the next num-
13 ber on there.

14 A Yes, I suppose. It won't affect any relationship
15 between the numbers, but it is the case that we're actually
16 talking about 6,000 households for the World Cup and 16,000
17 households for the Cosmos.

18 Q Okay, but it won't affect any relationship, so
19 we can go on, noting that the numbers should be 6,400 and
20 60 for the World Cup, and 16,300 for the Cosmos.

21 Now, the next figure takes the total number of
22 distant signal subscribers of the two stations for KMEX,
23 again, it was 504,158, and these are the figures that
24 Nielsen uses, the Form 3 subs, and for WOR, 8,282,893
25 and expresses the average households viewing as a percentage

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7 1 of the subscriber universe of the two stations, and then
2 gives us a ratio. Does that exhibit have any significance
3 to you?

4 A I don't quite know how to answer that question,
5 Mr. Senter. If you'd like to make a point, go right ahead.

6 Q Well, would it be fair to say that the World
7 Cup -- is it fair to say that the World Cup was 6.7 times
8 as popular to the distant signal subscribers that it reach-
9 ed, as the Cosmos games were to the distant signal sub-
10 sscribers that they reached?

11 A Taking into consideration the fact that we're
12 talking about the final and semi-final consolation game
13 of the World Cup and a typical Cosmos game in the middle
14 of the season, one probably could make that statement
15 from these numbers, yes.

16 Q So it would be even more valid to compare a
17 championship game to a championship, you think --

18 A It would seem --

19 Q -- which is a championship soccer game to a pro-
20 fessional sports championship game?

21 A If you think so.

22 MR. GARRETT: If we're moving off of Exhibit 16,
23 I just want to note for the record that I have the same
24 objection to it as I did to Exhibit 14.

25 MR. SENTER: I'm handing out an exhibit which I

ask be identified as SIN Exhibit 16.

(Whereupon, the document was
marked SIN Exhibit No. 16
for identification.)

BY MR. SENTER:

Q This exhibit, Dr. Lemieux, compares the viewing
of the World Cup to the viewing of the Stanley Cup, the
National Hockey League's championship -- world championship
event, involving Canadian and U.S. teams. Using the
same formulation as in the previous Exhibit 15 --

A Could you tell me the identity of the stations
involved in the Stanley Cup?

Q WOR.

A Okay.

MR. LLOYD: Do you have the dates of the Stanley
Cup?

MR. SENTER: May, 1982. It's in the May, '82
Nielsen sweeps, in the data.

BY MR. SENTER:

Q Now, again, because I don't understand the
Nielsen tables, this number for World Cup should be 6,460
subscribers, and for Stanley Cup 32,460 subscribers, but
the important thing to note is the bottom figure. When
you take and look at the entire subscriber universe and
compare this ratio, is it fair to say that World Cup

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9 1 appears to have been three times as popular to subscribers
2 in the KMEX distant signal universe as the Stanley Cup
3 was to subscribers in the WOR universe?

4 A That is what the table before us would show, yes.

5 Q And do you attach any particular significance to
6 that showing in terms of this proceeding, in terms of
7 placing a value on World Cup programming relative to Joint
8 Sports programming?

9 A I don't really think it's fair to the Joint
10 Sports Claimants to take a couple of particular events
11 when we're talking about hundreds, and say that this some-
12 how shows that the World Cup is worth considerably somehow
13 than the Stanley Cup. Other than that, I really don't have
14 any other comment.

15 Q Do you recall previously testifying as to the --

16 MR. GARRETT: Excuse me, are you off 16 now?

17 MR. SENTER: No. Strike that.

18 BY MR. SENTER:

19 Q Would it be fair to say, in your experience --
20 and you've testified in every one of these proceedings --
21 that one of the factors that the Tribunal should look at
22 is the uniqueness of the programming as to the cable
23 subscriber, whether it would have a particular appeal that
24 might cause them to subscribe to the system or maintain
25 their subscription?

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10 1 A I think that question would be more accurately
2 asked with regard to the operators themselves who, after
3 all, are reporting these signals for the purpose of their
4 ability to attract or retain subscribers.

5 Q Maybe I can help you. Mr. Dolan testified for
6 -- a cable operator, one of the largest in the country --
7 testified for Joint Sports in the 1979 proceeding. And
8 according to Joint Sports Proposed Findings of Fact and
9 Conclusions of Law -- I will just quote part of it --
10 "If we have something outstanding, for example, when we
11 carried the Stanley Cup finals on cable television, I think
12 for some homes, that was all we had to do for them for the
13 whole year, to justify their being a subscriber".

14 With Mr. Dolan, who testified for Joint Sports,
15 testimony in mind, do you still attach any significance
16 as to the cable operator's ration of 3-to-1?

17 A I think you ought to ask Mr. Dolan.

18 MR. GARRETT: Mr. Chairman, I'm not sure whether
19 counsel is done, but, for the record, let me note my objec-
20 tion to 16 as well, on the same basis as the previous --

21 CHAIRMAN BRENNAN: The Chair notes the ongoing
22 objection.

23 MR. SENTER: If I could now move the admission
24 of SIN Exhibits 14, 15 and 16?

25 MR. GARRETT: I would object, for the reasons I

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11 1 have stated previously.

2 CHAIRMAN BRENNAN: Let's hold that in abeyance,
3 Mr. Senter.

4 BY MR. SENTER:

5 Q Let's turn now to Joint Sports Exhibit 6, which
6 is the Subscriber Event Formula. Are you aware that
7 SIN placed in evidence that were related --

8 A I remember reading that in Mr. Goldman's testi-
9 mony. You may say they were related, but it wasn't clear
10 to me in the testimony how.

11 Q One of them Mr. Goldman called a marketplace
12 value exhibit. He compared the amount paid by SIN for
13 its rights to World Cup, to the amounts paid by local
14 broadcast stations and cable companies.

15 A I remember testimony to that effect, yes.

16 Q But you don't consider -- do you consider your
17 Exhibit 6 that you are sponsoring responsive to that
18 exhibit?

19 A No, we have not treated so-called rights formula
20 techniques.

21 Q Looking then only at the subscriber events
22 formula, would you agree that the formula has some useful-
23 ness?

24 A I think I testified earlier today that including
25 basing a calculation simply on events, without any measure

1 of their appeal to subscribers, I think, really does not
2 get us very far in terms doing any sort of comparative
3 evaluations.

4 Q And it doesn't help you that we've put in now
5 exhibits that show the relative appeal of the World Cup,
6 greater appeal of the World Cup at least, to some other
7 professional sports?

8 A If you're asking me -- I mean, I could provide
9 you with evidence from the Nielsen study for lots of sport-
10 ing events that have audiences that would have relationships
11 that are much different from this.

12 Q Sure. You could show for some Cubs games, that
13 the relationship would be much different, I agree, but
14 some events are more popular, some are less popular. But
15 you don't think we could agree that as a whole the events
16 are maybe worth some fixed amount?

17 A Mr. Senter, the Tribunal has spent now a consider-
18 able period of time trying to make these kind of compara-
19 tive evaluations, and they have a set of criteria which
20 they have used. I'm not about to argue about whether or
21 not those are applicable here or not.

22 Q Mr. Goldman testified for SIN that Madison Square
23 Garden sports charged 1/10th of a cent per subscriber per
24 sporting event, to cable systems located more than 75 miles
25 from, in this case, the Garden. Would you agree with Mr.

13 1 Goldman that sporting events generally are of declining
2 value outside of the home city?

3 A I think that that's not necessarily true. For
4 instance, in the most recent issue of Multichannel News,
5 there's an article about how cable subscribers in Florida
6 objected to the deletion of WOR because they wanted to
7 get the Mets games back.

8 I think there are particular audiences around
9 the country, and we've had considerable evidence to that
10 effect in the past.

11 Q Well, I don't want to mischaracterize your testi-
12 mony in 1982. I guess it was that some sports teams have
13 regional appeal, and then others, like the Atlanta Braves,
14 are more of a national team. So, it's going to vary from
15 team to team, I guess.

16 MR. GARRETT: Excuse me, is that a characteriza-
17 tion of his testimony, or is that yours?

18 MR. SENTER: I'm asking if it's a fair character-
19 ization of his testimony.

20 THE WITNESS: My testimony when?

21 BY MR. SENTER:

22 Q In 1982, in the 1980 Cable Royalty Proceeding?

23 A I really can't remember, Mr. Senter.

24 Q Let me place in front of you the transcript
25 pages 4686 and 4687 and ask you to review those, to see

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14 1 if it will refresh your memory about your prior testimony.

2 A Okay.

3 Q Does that now refresh your recollection that
4 you previously testified that by and large sporting events
5 have local regional appeal, and there are a few teams that
6 have nationwide appeal?

7 A What I testified to was the fact that distant
8 signal flagships tend to be carried by cable systems more
9 in the region near where they are, which is also, by the
10 way, the evidence that appeared in Sports Exhibit 23 that
11 we discussed this morning, but that I also testified that
12 certain teams have developed either broad national appeal
13 or a variety of pockets of appeal in different parts of
14 the country.

15 Q I take it these subscriber events here include
16 both the ones with the broad appeal and the local appeal.
17 Let me talk about one game in particular, and ask you if
18 that is included in there. Do you recall, on December 11,
19 1982, there was a great basketball game. It was the equiva-
20 lent of Pavarotti versus Domingo, UVA, Virginia versus
21 Georgetown.

22 MR. GARRETT: I object to comparisons like that.
23 I don't know what they mean.

24 MR. SENTER: Ralph Sampson versus Pat Ewing.

25 MR. GARRETT: Now I understand.

1 CHAIRMAN BRENNAN: Mr. Garrett, I think it would
2 be well advised to object because Domingo is a soccer
3 player.

4 BY MR. SENTER:

5 Q That game was carried by WTBS. Is it included
6 in the subscriber events in Joint Sports Exhibit 6?

7 A I would presume that it is one of the 33 NCAA
8 events.

9 Q On what basis was that event included?

10 A I have to admit, Mr. Senter, that I made that
11 statement without any prior knowledge of the proof of that.
12 If you really need an answer to that question, I'm afraid
13 you will have to ask counsel.

14 MR. SENTER: Can counsel tell us whether the NCAA
15 events carried by WTBS would include the Georgetown versus
16 Virginia game?

17 MR. GARRETT: I cannot, at this moment, but I
18 will certainly make an effort to determine that if you
19 think it is relevant.

20 MR. SENTER: Do you have any reason to believe
21 it is not included in there?

22 (No response.)

23 MR. SENTER: Excuse me. Do you have any reason
24 to believe it's not included in there.

25 MR. GARRETT: On advice of counsel, I don't know.

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1 MR. LLOYD: What more do you want? They've said
2 they don't know.

3 MR. SENTER: Well, let's assume it is because
4 I have a feeling it was.

5 I'd like to have this marked SIN Exhibit 17,
6 Virginia versus Georgetown, WTBS, December 11, 1982.

7 (Whereupon, the document was
8 marked SIN Exhibit No. 17
9 for identification.)

10 BY MR. SENTER:

11 Q I'd like to direct your attention to the third
12 page of the exhibit, to an article from the Washington
13 Post entitled Cable Aired GU-Va. on December 11, specifically
14 to the fourth paragraph, "Rex Lardner, Director of Sports
15 Programming for CBS, said yesterday the agreement repre-
16 sents the first time that cable network had outbid the
17 major networks for rights to a significant sporting event
18 other than soccer".

19 Is it your understanding that a sports team is
20 compensated for non-network carriage of sporting events,
21 Dr. Lemieux, that's all you're claiming for, right?

22 A Well, non-network in the sense it's defined here.

23 Q Well, how is a network defined? National network?

24 A Mr. Senter, I would have to read the congressional
25 history of the 1976 Copyright Act to be able to discuss

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17 1 with you the definition of a network.

2 Q Well, if you could turn -- let's explore what
3 kind of arrangement that WTBS used for this Georgetown-
4 Virginia game. If you could turn to -- there's a broad-
5 casting ad included in this exhibit, and there's an ad
6 that's captioned How 108 Stations Scored Date with TNT.

7 If you will recall you testified earlier about
8 the duplication of the SIN signal. According to this ad,
9 21 independents and 87 affiliates of ABC, CBS and NBC,
10 representing a full 81 percent of the country's television
11 markets, got in the gam with Turner Network Television.

12 A All right. That's what it says.

13 Q You testified earlier as to your experience
14 in the television industry. Would you not characterize
15 this arrangement as a classic network arrangement?

16 A No, I think this is more of a classic syndication
17 arrangement.

18 Q Was the program taped and bicycled around from
19 station to station?

20 A Entertainment Tonight is syndicated to television
21 stations, and is distributed by satellite. It is consider-
22 ed to be a syndicated program.

23 Q How was this different from a regular network
24 program? If they sold advertising on a network basis,
25 would that make it into a network programming?

18 1 A Mr. Senter, again, I'm not going to argue with
2 you the definition of a network. That's encompassed in
3 the 1976 Copyright Act. That's not my professional area.

4 Q I'm not asking for that. I'm asking --

5 A Well, you're asking me to make a definition of
6 a network, which is a legal term that exists in the 1976
7 Copyright Act.

8 Q No, I'm asking for your understanding as an
9 expert in the television industry. We'll get to --

10 A I cannot say whether or not this constitutes a
11 network within the definition of a network that exists
12 before the Copyright Royalty Tribunal.

13 Q Now a few minutes ago you testified that Joint
14 Sports was only claiming royalties for the sports teams
15 for distant signal broadcast of local games, correct?

16 A We are claiming for copyrighted telecasts that
17 are owned by members of the Joint Sports Claimants.

18 Q If a sports team transferred the license to the
19 program, the nationwide license, as they do to ABC, CBS
20 or NBC, you would not claim for them, correct? They would
21 not be included in your subscriber event figures here,
22 correct?

23 MR. GARRETT: Mr. Chairman, I'm going to object.
24 I think all of these questions go to the same issue, as
25 to whether there is some kind of network program here. And

19 1 this witness has testified that he cannot respond to those
2 questions.

3 I must say, I've had a difficult time understand-
4 ing how it is that an entity which sends its telecasts to
5 over 200 different affiliates throughout the United States
6 via satellite in most of the country throughout the United
7 States can consider itself a non-network and complain about
8 what amounts to one event out of the millions -- hundred
9 thousands that we are dealing with here.

10 The objection is that he has testified that he
11 cannot answer these questions, and I object.

12 MR. SENTER: I have ended that line of questions
13 and commenced on an entirely different one.

14 MR. GARRETT: Well, I have difficulty understand-
15 ing the difference between the two.

16 MR. SENTER: Do you recall the last question?

17 MR. GARRETT: I have an objection.

18 CHAIRMAN BRENNAN: There is no question pending
19 on that issue. We've gone on to a new topic.

20 MR. SENTER: That's right. I thought there was
21 a pending question on this new topic.

22 CHAIRMAN BRENNAN: Are you objecting to that,
23 too, Mr. Garrett, or do you want to wait and see where
24 we are going?

25 THE WITNESS: What is the question?

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1 MR. SENTER: Let me ask the question again then.

2 BY MR. SENTER:

3 Q Would you agree that if a sports team transferred
4 its rights, national telecasting rights, to -- I'm going
5 to use -- and I'm not talking about a network arrangement
6 -- ABC, that that program event could not properly be
7 included in the Joint Sports Claim?

8 MR. GARRETT: I object for the reasons stated
9 before. It calls for a legal conclusion which the witness
10 has repeatedly testified that he is not capable of render-
11 ing in this proceeding.

12 CHAIRMAN BRENNAN: I think Mr. Garrett's point
13 is well taken, Mr. Senter.

14 MR. SENTER: I'm trying to determine, Your Honor,
15 the basis for the inclusion of significant subscriber
16 events in this Joint Sports Exhibit 6.

17 CHAIRMAN BRENNAN: I was only sustaining the
18 objection to the question as posed.

19 BY MR. SENTER:

20 Q Well, let me ask a more direct question. On
21 what basis were the Atlanta Braves games included in
22 Joint Sports Exhibit 6?

23 A WTBS is -- holds -- is licensed by the Atlanta
24 Braves to distribute Atlanta Braves baseball through con-
25 tracts that are well known to this Tribunal.

21

1 Q You, of course, and the Tribunal is aware that
2 the Braves and WTBS are commonly owned?

3 A I don't know if they are, but I presume that
4 the Tribunal is intelligent and informed enough to know
5 that, yes.

6 Q Well, could you explain to me how the Braves are
7 harmed by the distant signal carriage by WTBS?

8 A How the Braves are harmed?

9 Q Yes.

10 MR. GARRETT: Mr. Chairman, we have not presented
11 this witness today to talk about harm to Joint Sports
12 Claimants. We have, over the years, presented a number
13 of people within the professional sports ranks to address
14 that very issue. Mr. Lemieux, Dr. Lemieux is not one of
15 them.

16 CHAIRMAN BRENNAN: Harm is one of our criteria.
17 If the witness has no knowledge, he can so indicate. The
18 objection is overruled.

19 THE WITNESS: You asked me how the Braves are
20 harmed? I think one has to ask the question how the Braves
21 might be harmed not by distant signal telecast of their
22 games in other markets, but by the importation of games
23 into the Atlanta market. In some cases, those may, in
24 fact, affect the attendance at Braves games in Atlanta.

25 BY MR. SENTER:

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22 1 Q Are you aware that that was a basis for an award
2 to the Joint Sports Claimants?

3 A It's been a subject of testimony by such people
4 as Commissioner Kuhn, in prior proceedings.

5 Q So the Braves are only entitled to compensation
6 to the extent -- for the harm they experienced by declining
7 attendance as a result of the importation of signals into
8 the Atlanta market?

9 A In the harm portion of the calculation.

10 MR. GARRETT: Mr. Chairman, I again want to note
11 so there is no confusion in the record here, the testimony
12 that we have presented on harm has emanated from other
13 witnesses, not Dr. Lemieux, that I don't want his responses
14 to such questions to be in any way limiting upon us to
15 point to other portions of the record as to the nature of
16 the harm and the extent of the harm and so forth.

17 MR. SENTER: I agree he can point to other
18 portions of the record.

19 BY MR. SENTER:

20 Q Let me ask you one more question by way of
21 background on the Braves. You are aware, are you not, that
22 Mr. Turner has promoted carriage of the Braves games -- the
23 owner of the Atlanta Braves has promoted carriage of the
24 Braves games on cable systems?

25 A I believe so.

23 1 Q Do you believe that notwithstanding this promotion
2 that the Braves are still entitled to some compensation
3 for distant signal carriage?

4 A Yes.

5 (Whereupon, the document was
6 marked SIN Exhibit No. 18
7 for identification.)

8 Q I have just distributed a document entitled
9 Exhibit 18, which is a letter dated July 2, 1982, from
10 Bowie Kuhn, Commissioner of Baseball, to Ted Turner at the
11 Atlanta Braves.

12 I only want to point out two sections. Paragraph
13 2 states that "The Commissioner's office estimates that
14 WTBS' gross signal revenues from baseball will approximate
15 \$20 million on an annual basis", and the sentence at the
16 top of page 2, "The baseball coverage of WTBS outside the
17 Braves home territory which result principally from the
18 marketing efforts of your management", and then explains
19 how it is harmful to major league baseball.

20 MR. GARRETT: I'm sorry, but is there a question
21 on that?

22 MR. SENTER: No. I want to put in another
23 exhibit, too. While that's being prepared, I would like
24 to ask one question. The last sentence on the first page,
25 Dr. Lemieux, and if you don't know the answer to this, just

24 1 state that you don't know it. "Reference is to provisions
2 of the Central Fund agreement". Are you familiar with the
3 provisions of that agreement?

4 A Not very well, no.

5 (Whereupon, the document was
6 marked SIN Exhibit No. 19
7 for identification.)

8 Q I have passed out a document marked SIN Exhibit
9 19. It's an unpublished decision, U.S. District Court
10 for the Southern District of New York in the case captioned
11 ABC Sports, American Broadcasting Companies, Inc., and
12 while there are only five baseball teams listed in that
13 caption, there are ten baseball teams that are plaintiffs,
14 and the Defendants are Atlanta Braves, Superstation, Inc.
15 and Ted Turner Broadcasting, Inc.

16 Dr. Lemieux, I just want to call your attention
17 to a few observations of the judge in this case. First,
18 I want to direct your attention to page 4 of the decision,
19 the second paragraph, which states, "There were a number
20 of stipulated findings of fact stipulated by both sides".
21 There's about ten major league baseball teams as plaintiffs
22 and the Atlanta Braves and WTBS as defendants, and then
23 for some of these stipulated facts.

24 On page 6, second paragraph, defendant Supersta-
25 tion, Inc., the FCC licensee of station WTBS, and the

25 1 Atlanta National League Baseball Club, Inc., known as the
2 Atlanta Braves, are wholly owned and controlled by the
3 defendant Turner Broadcasting Systems, Inc. R.E. ("Ted")
4 Turner, III, owns 86.7 percent of Turner Broadcasting.
5 WTBS is the flagship of the Atlanta Braves".

6 And then continuing on that same page --

7 MR. GARRETT: Excuse me, is there a question on
8 that?

9 MR. SENTER: No, I just want to --

10 MR. GARRETT: Will there be a question?

11 MR. SENTER: Yes. And then continuing with the
12 next paragraph on the page -- I'll paraphrase that. It
13 says that the station -- in 1972, station WTBS, which was
14 then known as WTCG, and the Braves entered into a contract
15 granting the station certain over-the-air and cable dis-
16 tribution rights.

17 Then turning to page 7, the top paragraph, and
18 this is the tenth stipulated finding of fact, "Ten, in
19 January 1976, WTBS and the Atlanta Braves amended their
20 1972 contract to extend its terms and broaden its flagship
21 station telecast/cablecast area to the entire United States
22 and abroad".

23 BY MR. SENTER:

24 Q Dr. Lemieux, that paragraph, is that an agree-
25 ment that transfers to WTBS the entire nationwide

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1 broadcasting and cablecasting rights to the Braves games?

2 A I'm not capable of making a determination on
3 the basis of four lines here, nor am I lawyer.

4 Q The decision continues: "Twelve, Turner Broad-
5 casting sought to establish WTBS as a Superstation, such
6 that the signal of WTBS would be carried via satellite to
7 cable television systems beyond the home market of WTBS",
8 the steps included incorporation of Southern Satellite
9 System.

10 Continuing on page 8. "Turner Broadcasting
11 continued to carry out its plan to create a national net-
12 work by promoting WTBS as a Superstation and by soliciting
13 and encouraging cable systems throughout the country to
14 contract with SSS to acquire the WTBS signal for their
15 subscribers." These are still stipulated findings of
16 fact.

17 Continuing in the next paragraph, second sentence,
18 "Unlike these other stations, WTBS actively promotes itself
19 as a Superstation and seeks to profit from the transmission
20 of its signal. WTBS alone, among such stations, actively
21 encourages cable system operators to provide their sub-
22 scribers with programming from WTBS".

23 It continues about how TBS feeds national ads to
24 its satellite carrier, and it has agreed to indemnify that
25 carrier for any liability incurred as a result of that.

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27 1 And then the court makes some findings, beginning on page
2 9.

3 MR. GARRETT: Excuse me, Mr. Chairman. I
4 really don't know what the purpose of this entire exercise
5 is. He has, under the Tribunal's very liberal rules,
6 gotten this document into evidence here. We certainly
7 agree it is proposed findings, and he can quote whatever
8 he wants to quote from that document, but I don't under-
9 stand what relevance this has to Dr. Lemieux and why Dr.
10 Lemieux should be up there on the stand while he puts into
11 evidence his own testimony about this document. I object.

12 CHAIRMAN BRENNAN: Mr. Senter?

13 MR. SENTER: I'm going to want to ask, after I
14 finish -- and I just have a few more sentences to read --
15 to ask Dr. Lemieux whether he believes the Braves should
16 be included as a, based on this decision, as a --

17 CHAIRMAN BRENNAN: All this buildup is to assist
18 the witness in responding to your ultimate question?

19 MR. SENTER: Right.

20 MR. GARRETT: Well, I have an objection to the
21 ultimate question because it, too, calls for a legal con-
22 clusion which the witness is incapable of providing an
23 answer to.

24 CHAIRMAN BRENNAN: I do not recall that counsel
25 has yet posed the question.

1 MR. GARRETT: But he said what he was going to
2 say. I took him at his word.

3 BY MR. SENTER:

4 Q Continuing on page 19 --

5 MR. GARRETT: I have an objection, Your Honor.

6 CHAIRMAN BRENNAN: The Chair will permit counsel
7 to continue reading, and then will respond to the objection
8 when the question is posed.

9 BY MR. SENTER:

10 Q Continuing with -- this is with the findings of
11 the court. "We reject the defendants' characterization of
12 WTBS as simply a local over-the-air station. The evidence
13 is overwhelming that Turner Broadcasting Systems has
14 actively and purposefully developed WTBS into what is in
15 essence a national cable network which reaches over 20
16 million viewers.

17 In the last paragraph on page 20, first sentence,
18 the judge observes "In short, if WTBS broadcasts the LCS,
19 it will be in direct competition on a nationwide basis
20 with ABC".

21 And then on page 33, the judge distinguishes
22 WTBS and other superstations, the second and the third
23 paragraphs. "In every instance, except that of WTBS, the
24 flagship station involved was a passive or inactive super-
25 station, meaning that they didn't facilitate or benefit

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1 from the retransmissions.

2 "Only the Atlanta Braves have ever sold rights
3 to events like the LCS, which are then transmitted by
4 cable and which national advertising is substituted in
5 place of the local advertising, and all of this being done
6 on a network competing with the exclusive network rights
7 granted to ABC."

8 And then finally, on page 36, next to the last
9 paragraph, and this is referring to the Atlanta Braves
10 themselves, "Moreover, the Atlanta Braves had clear
11 knowledge that WTBS is a willing Superstation which reaches
12 a large nationwide audience and benefits from national
13 advertising revenues. Under these circumstances, the
14 Atlanta Braves would commit a breach of their agreement
15 with ABC by permitting WTBS to broadcast the LCS in com-
16 petition with ABC".

17 Having gone through the portions of the decision
18 that I read and the early letter from the Commissioner
19 of Baseball, in view of the stipulated finding that the
20 Braves granted WTBS nationwide telecast and cablecast
21 rights -- excuse me, it's not nationwide -- to the entire
22 U.S. and abroad, do you still believe it is proper to
23 include the Atlanta Braves in this list of subscriber
24 events, as a station claiming compensation for an infringe-
25 ment of its copyright?

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1 MR. GARRETT: I object.

2 CHAIRMAN BRENNAN: What do you mean by the word
3 "proper", Mr. Senter?

4 MR. SENTER: Appropriate, should it be included,
5 are they the copyright owner or they transfer the copy-
6 right --

7 CHAIRMAN BRENNAN: You are not asking the witness
8 to express a legal view?

9 MR. SENTER: No.

10 CHAIRMAN BRENNAN: Any comment, Mr. Garrett,
11 before we vote?

12 MR. GARRETT: I have no idea, if he's not asking
13 for a legal view, as to what he means by proper, and if
14 he's not, what relevance it has to this proceeding.

15 MR. SENTER: Well, I'm asking him as an expert
16 in the television industry. And as an expert not only
17 in the television industry, but in these Copyright Royalty
18 Tribunal, as someone who, as he said when he first got
19 on the stand today, has testified in every one of the
20 proceedings and is probably the second most experienced
21 witness here. He is certainly familiar with the criteria
22 of harm and benefit and marketplace value that the Tribunal
23 looks at, and I'm asking him, in view of the special
24 agreement between the Braves and WTBS and WTBS' promotion
25 of itself as a cable network, whether the Braves are harmed

31 1 by distant signal carriage such that they should be entitled
2 to any compensation from the Copyright Royalty Tribunal.

3 MR. GARRETT: I understand that to be a different
4 question than he asked before.

5 COMMISSIONER RAY: That is a different question.

6 CHAIRMAN BRENNAN: The Tribunal is voting on
7 the question as originally posed. If you wish to ask the
8 other question and Mr. Garrett objects, we will vote --

9 MR. GARRETT: I have no objection to the other
10 question.

11 CHAIRMAN BRENNAN: Pardon me?

12 MR. GARRETT: If he wants to ask whether the
13 Atlanta Braves are harmed --

14 CHAIRMAN BRENNAN: The Tribunal is voting on
15 the question as originally posed.

16 COMMISSIONER RAY: But he has withdrawn the
17 question.

18 CHAIRMAN BRENNAN: No, he hasn't withdrawn it.
19 The objection to the original question is overruled.

20 THE WITNESS: Could I now hear the original
21 question.

22 BY MR. SENTER:

23 Q I believe the original question is, in view of
24 the letter from Bowie Kuhn to Ted Turner and the portions
25 of the decision that I read to you, whether you still feel

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1 it's proper to include the Atlanta Braves in the list of
2 subscriber events for which Joint Sports are claiming
3 compensation.

4 A Yes.

5 Q On what basis?

6 A They are the rights holder to telecasts which
7 are distributed on distant signal non-network basis.

8 Q What rights do they hold?

9 A Who?

10 Q The Braves.

11 A They hold all the rights to their games.

12 Q Well, transferred. The decision says that they've
13 transferred some to WTBS. What's left?

14 A I'm not willing to make any statements on the
15 basis of this decision.

16 Q Excuse me, I'm asking you to testify on the
17 basis of the statements in that decision.

18 A I can't do that, Mr. Senter. I'm not qualified
19 to do that.

20 Q You can assume that the statement in the decision
21 and stipulated finding of fact that the Atlanta Braves
22 transferred the total telecasting/cablecasting rights to
23 WTBS, to all the U.S. and abroad, you can assume, can you
24 not, that that statement is correct for purposes of answer-
25 ing the question? Qualify your answer on the --

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1 A I don't know what the word transferred means
2 in that case. I have no knowledge of the actual licensing
3 agreement between WTBS and the Atlanta Braves nor am I
4 a lawyer. I cannot answer the question that you have
5 posed to me.

6 MR. GARRETT: Mr. Chairman, so that there is no
7 confusion in the record on this point, there is an express
8 agreement between the Atlanta Braves and WTBS television
9 station which authorizes the Braves to collect any and all
10 royalties attributable to their telecast on a distant
11 signal basis in this proceeding.

12 Never before has WTBS or Turner Broadcasting
13 or anyone else raised a question about that. If he wants
14 to go ahead and ask the questions he wants, that's fine,
15 but I don't want there to be any confusion that we, indeed,
16 the Joint Sports Claimants would properly represent the
17 Atlanta Braves telecast in this proceeding.

18 I also want to make one other point, too, with
19 respect to this document so there is no confusion in the
20 record, that this was a lawsuit that involved solely
21 telecast of the league championships here. That's the
22 best out of five games at the end of the season. It was
23 a lawsuit that was brought by major league baseball against
24 WTBS to preclude WTBS and the Atlanta Braves from tele-
25 vising those games, the league championships. That's one

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34 1 out of the 188 -- I'm sorry -- only one game. None of
2 those league championship games appear in that Exhibit 6
3 which supposedly forms the basis of all of this cross-
4 examination.

5 CHAIRMAN BRENNAN: Have we finished with this
6 matter?

7 MR. SENTER: I think we can save this for --
8 I would make the comment none of them appear in there
9 because they were enjoined.

10 CHAIRMAN BRENNAN: Excuse me. Mr. Garrett, did
11 I understand that you have no objection to Exhibits 18 and
12 19 being received into evidence?

13 MR. GARRETT: I would hate to put it in the
14 context of no objection, but consistent with prior Tribunal
15 procedure, I cannot voice an objection at this time.

16 CHAIRMAN BRENNAN: They will be received into
17 evidence.

18 (Whereupon, SIN Exhibits Nos.
19 18 and 19 were received in
20 evidence.)

21 (Whereupon, the documents were
22 marked SIN Exhibits Nos. 20
23 and 21 for identification.)

24 BY MR. SENTER:

25 Q These two exhibits together show the effect on

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35 1 the subscriber event formula if merely the Atlanta Braves,
2 WTBS Atlanta Braves games are excluded. This is not includ-
3 ing the Georgetown-Virginia game or the Atlanta Hawks games,
4 which are also owned by the Braves, or, in fact, indeed,
5 the games of other stations that also own major league
6 baseball clubs. I have no questions on them, I just move
7 the admission.

8 MR. GARRETT: May I ask the reason why WTBS
9 Braves telecasts are being excluded?

10 MR. SENTER: I would tend to argue that they are
11 not entitled to any compensation --

12 MR. GARRETT: Just tell me why. I can't deter-
13 mine whether this is relevant or not, whether I have an
14 objection based on relevance, unless you tell me why the
15 WTBS Braves telecasts are excluded.

16 MR. SENTER: They are excluded on the basis of
17 this decision, the letter from Bowie Kuhn that shows that
18 the Braves have transferred the nationwide rights and have
19 authorized nationwide distribution of its signal.

20 MR. GARRETT: Mr. Chairman, I will object to this
21 exhibit on the basis that it is irrelevant as to the ability
22 of the Atlanta Braves to claim royalties in this proceed-
23 ing. I think I've already stated that they are authorized
24 to do so. It is, in fact, the case that the cable systems
25 throughout the United States paid for all the programming

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36 1 on WTBS as on a distant signal non-network basis, and that
2 it has all gone into this royalty fund that we are -- you are
3 allocating.

4 It has never before been suggested, the obvious
5 reasons for that fact, that this is in any way uncompen-
6 sable. Again, I just don't see what the basis is, what
7 basis has any relevance here for excluding WTBS Braves
8 telecasts.

9 MR. SENTER: Your Honor, without excepting --

10 MR. GARRETT: Excuse me. It's been a long day
11 for all of us. I will withdraw the objection and it can
12 stand in there for whatever relevance the Tribunal wants
13 to attach to it, but I don't want in any way my not object-
14 ing to be construed as some sort of admission that whatever
15 argument he has, that it has any merit to it.

16 CHAIRMAN BRENNAN: They will be received into
17 evidence.

18 (Whereupon, SIN Exhibits Nos.
19 20 and 21 were received in
20 evidence.)

21 MR. SENTER: Chairman Brennan, if we could take
22 our recess now, I think I could finish up my questioning
23 in about 30 minutes.

24 CHAIRMAN BRENNAN: We will take our recess at
25 this point.

1 (... (Whereupon, a short recess was taken.)

2 BY MR. SENTER:

3 Q Dr. Lemieux, I want to ask you some questions
4 about your testimony on direct about the duplication of
5 signals now and, if it would help, if at any point you
6 feel that Mr. Smith would be a better witness, please let
7 me know and we can ask the same questions of Mr. Smith.

8 Again, you testified this morning that in --
9 that there was duplication of the SIN distant signal,
10 over-the-air duplication of the SIN distant signal in
11 the Hartford ADI.

12 Are you aware of the nature of the over-the-air
13 broadcast signal SIN has in Hartford?

14 A My understanding is, it is a translator.

15 Q Are you aware it is a directionalized translator?

16 A No, I don't know that.

17 Q Are you also aware that translators are must
18 carry if the cable system is located in the community
19 served by the translator?

20 A I believe that's the case, but I would have to
21 go back and look at the FCC rules.

22 MR. GARRETT: Mr. Chairman, let me interpose
23 an objection to this line of questioning. Dr. Lemieux
24 is not offered -- did not offer testimony on that score
25 with respect to duplication of SIN programming, rather he

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1 is simply showing that SIN has included in the exhibit that
2 it markets to advertisers, cable households that are also
3 carried on a distant signal basis. It will be the offer-
4 ing of Mr. Smith, who is an engineer, and engineering
5 questions can properly be directed to Mr. Smith.

6 MR. SENTER: He's right, and I may have mis-
7 characterized Dr. Lemieux' testimony. I think he testified
8 that Hartford was listed as an affiliate and, therefore,
9 I think the inference he made was that, therefore, the
10 ADI was being claimed, the audience in the ADI was being
11 claimed by SIN for Hartford, and that there were cable
12 systems located in that ADI.

13 So the proper question should be, are you aware
14 that for translator or low power stations, SIN does not
15 claim the ADI as the audience served, but the actual
16 audience within the receivable contours of the low power
17 translator station?

18 THE WITNESS: Obviously not.

19 BY MR. SENTER:

20 Q You testified that in 1982, the Bakersfield
21 translator was broadcasting KMEX. Do you recall that?

22 A That's my understanding. But I think Mr. Smith
23 knows more about this issue than I do.

24 Q Well, I seem to have misplaced my FCC decision,
25 which I will locate later, on the Bakersfield translator

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39 1 which, in the FCC decision, states that in 1982 the trans-
2 lator was carrying KFTV, the Fresno-Hanford station, and
3 I will just have to --

4 MR. GARRETT: Excuse me, is that a SIN affiliate
5 as well?

6 MR. SENTER: Yes.

7 BY MR. SENTER:

8 Q To what extent are the signals of the Joint
9 Sports flagship stations also duplicated over-the-air?
10 Do you know to what extent they are also duplicated over-
11 the-air?

12 A Into cable markets, or on cable systems, or what
13 do you mean by duplicated?

14 Q Well, let's take an example. WMAR in Baltimore
15 is listed as the flagship station for the Baltimore
16 Orioles, correct?

17 A Yes.

18 Q And WMAR, we know from the FCC's ARTEC decision,
19 is carried as a distant signal on the Arlington Cable
20 System.

21 A I'll accept that. I don't know that to be a
22 fact.

23 Q And the Orioles -- WMAR is a flagship station
24 for a regional network of TV stations, are you aware of
25 that?

40

1 A Yes.

2 Q And one of the stations in that network is
3 channel 20, WDCA here in Washington, D.C. Are you aware
4 of that?

5 A Not particularly, but I'll accept your statement.

6 MR. SENTER: I'm handing out an exhibit marked
7 SIN Exhibit 25 -- we're a little bit out of order here --
8 entitled Over the Air Duplication of Joint Sports Claimants
9 Distant Signals.

10 (Whereupon, the document was
11 marked SIN Exhibit No. 25
12 for identification.)

13 BY MR. SENTER:

14 Q If you will flip through this exhibit, Dr.
15 Lemieux, you will see it consists of television listings
16 in the Washington Post during June of 1982. If you will
17 look at the column for WDCA channel 20, you can see in
18 every case the Baltimore Orioles baseball game, and if
19 you look at the column for channel 2 WMAR in Baltimore,
20 which is being carried on a distant signal in the Arlington,
21 you will see the same game was being broadcast.

22 A That appears to be correct by the dates that
23 you have here, yes.

24 Q Is that the same sort of over-the-air duplication
25 that you were referring to when you were talking about

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1 over-the-air duplication of the SIN signal, or were you
2 only talking about the Bakersfield ones?

3 A No, I would agree that there are instances where
4 both a flagship and a regional network station may well
5 be carried by the same system. I might add, however, that
6 not all regional network stations carry the full schedule
7 of games that are originated by the flagship stations, so
8 that there may be times during the course of a season
9 when there is no duplication in that sense.

10 Q We've already introduced an exhibit that contained
11 a Broadcasting magazine article from 1982, which showed
12 which of the sports teams had regional networks.

13 (Whereupon, the documents were
14 marked SIN Exhibits Nos. 22,
15 23 and 24 for identification.)

16 I've just handed out exhibits marked SIN
17 Exhibits 22, 23 and 24. 22 is captioned Duplication of
18 WGN-WOR Carriage of Baseball; 23, Duplication of WGN-WTBS
19 Baseball; and 24, Duplication of WOR-WTBS Carriage of
20 Baseball.

21 What baseball stations do WOR, WGN and WTBS
22 carry?

23 A You mean the teams?

24 Q Yes, the teams.

25 A They are all National League teams. The Mets

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1 are on WOR, the Cubs on WGN and Atlanta Braves on WTBS.

2 Q When the Braves play the Mets, not in every
3 instance, but on numerous occasions, the game will be
4 broadcast on WTBS and on WOR?

5 A Well, it depends a lot on if the game is in
6 New York, let's say, it may well be that it is not on
7 WOR because it would be blacked out from the local market.
8 Also, we're really only talking here about, at most, 1
9 14 games a season out of the entire schedule.

10 Q Let me direct your attention to SIN Exhibit 2,
11 third page -- well, let's just go to the last page, it's
12 easier to read.

13 A SIN Exhibit 2?

14 Q 24, the last page, and I've circled a game there
15 that's being played -- I'm sorry, I can't read that, we'll
16 have to flip back to the other one. Tuesday, June 1,
17 there's a game being played at 7:30 in the evening, and
18 that's Atlanta Braves versus the Mets, and that would be
19 a home game, and on channel 9 WOR, do you see that?

20 A It appears to be, yes.

21 Q And then what the last page shows is that on
22 that same Tuesday, the game was also being carried on
23 channel 17 WTBS. The last page is the Atlanta Journal
24 TV Week. TBS is 17 in Atlanta, is it not?

25 A Yes, it is.

43 1 Q So at least in that instance, a home game in
2 New York was being shown on WOR and was also being shown
3 on WTBS?

4 A Is that a question?

5 Q Yes.

6 A Yes.

7 Q And now turn your attention to SIN Exhibit 22,
8 the first document in there is the Chicago Tribune TV
9 Week dated April 4 through 10, 1982, and the second page
10 of that article shows that on Saturday, channel 9, which
11 is WGN in Chicago, would be carrying the Cubs versus the
12 New York Mets. Now, that would be a game in Chicago.

13 If you turn to the last page --

14 A Could you tell me the date this is, again?

15 Q Well, the TV Week, is dated April 4 through 10.

16 A So we can presume it is the 9th.

17 Q Well, the Saturday would have been the 10th. You
18 can tell if you will turn to the last page, you will see
19 that it is a New York Times article and it's Saturday,
20 April 10.

21 A Yes. Okay.

22 Q If you will look at the last page, at the bottom
23 of the left-hand side, you will see that the Mets versus
24 Cub game was carried on channel 9, that's WOR in New York.
25 So is it a fair conclusion to draw from this exhibit that

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1 at least on April 10, 1982, the Mets versus Cubs game
2 was shown both on WGN and WOR?

3 A Yes, they were.

4 Q Now, looking at SIN Exhibit 23, which is the
5 first document, Chicago Tribune TV Week for May 9 through
6 15, 1982, and if you turn to the second page, it shows on
7 Tuesday and Wednesday, channel 9, WGN is carrying Cubs
8 versus Atlanta Braves. Do you see that?

9 A Yes.

10 Q Then turning to the next document, which is from
11 the Atlanta Journal TV Week, it shows that on May 11,
12 and then if you turn to the next page, on May 12, WTBS
13 was also carrying the Atlanta Braves-Chicago Cubs game.
14 So is it fair to say that based on these documents, that
15 on this one occasion at least, WGN and WTBS were carrying
16 the same baseball game?

17 A Yes.

18 Q So that on -- in your Exhibit 5, you listed a
19 number of cable systems that carried more than one Joint
20 Sports station -- in fact, some carried three, four, five
21 Joint Sports stations?

22 A That's correct.

23 Q And on those systems, at least they were carrying,
24 let's say, WGN and WTBS, at that time, the same game would
25 have been available on both channels, correct?

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45 1 A To people who subscribe to systems that carry
2 both of those signals, yes.

3 Q Are you familiar, Dr. Lemieux, with the concept
4 that's been discussed previously in this proceeding, known
5 as fractionalization?

6 A No, I'm not.

7 Q Well, let me see if I can aptly characterize
8 it, and then I want to ask you a question about fraction-
9 alization. I believe it's the diversion of an audience
10 from an over-the-air station because of the importation
11 of a duplicative program of the over-the-air station? Is
12 that --

13 MR. GARRETT: You can give any definition you
14 want.

15 BY MR. SENTER:

16 Q Do you understand that?

17 A I understand what the concept you describe is.
18 I don't know if it is called fractionalization.

19 Q Okay. So that if -- let's take Bakerfield as an
20 example -- if the KFT translator and KMEX, which was being
21 imported as a distant signal, were both showing the World
22 Cup, a cable subscriber who watched KMEX on the cable
23 system would not watch the World Cup off the translator.

24 A If they watched KMEX, by definition, they would
25 not be watching --

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1 Q So the translator would lose an audience, would
2 lose potential audience, correct?

3 A In the local market. I mean, the program
4 doesn't lose any audience.

5 Q No, the program doesn't lose any audience, but
6 it loses an audience in the local market. And if this
7 loss of audience was substantial in Bakersfield because
8 of the importation of the KMEX system which duplicated
9 the programming of the translator, then local sales di-
10 rected towards the Bakersfield audience, sale of advertis-
11 ing that's run on this translator, would be affected,
12 would be harmed, correct?

13 A Advertising from the local translator owner.

14 Q Right.

15 A Yes. Well, it depends upon whether advertisers
16 take that into consideration when they made that particu-
17 lar buy. I mean, it may or may not happen, it depends
18 upon that.

19 Q But if it were significant and showed up in the
20 measurements that advertisers look at, it would affect
21 the translator share of local revenues?

22 A I suppose if it happened over a long enough period
23 of time, sure.

24 Q But then translators don't really sell much local
25 advertising, but if the primary station, in this case KFTV,

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47 1 sometimes sold local spots directed towards the Bakers-
2 field market, then this fractionalization would affect
3 KFTV's ability to sell local spots, or at least the price
4 they could charge for local spots in Bakersfield, correct?

5 A It could.

6 Q And if SIN as a network shared in the compensa-
7 tion received by KFTV for local spot sales, SIN would be
8 harmed by this fractionalization, would it not?

9 A That's a harder question to answer since,
10 presumably, SIN would get compensated for larger network
11 reach as well. It might be able to sell advertising on
12 the network because of its expanded overall reach, that
13 would help compensate for its loss in the local compensation.

14 Q Well, how, in this instance, is SIN getting
15 expanded network's audience in the case of the duplication
16 of the KMEX --

17 A You're talking about the duplicated case now.

18 Q Yes. It doesn't, does it?

19 A I guess in the duplicated case, it would not.

20 Q So SIN would be harmed if this scenario we
21 painted occurred?

22 A Depending upon how -- yes. I mean, it could be
23 harmed to some unknown extent.

24 Q If the network shared in local spot --

25 A And however much those local spots accounted for,

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1 the Hanford carriage and the distant signal market and
2 so forth.

3 MR. SENTER: I would move the SIN Exhibits 22
4 through 25.

5 CHAIRMAN BRENNAN: The last group will be
6 received into evidence. We still have three or four
7 pending objections.

8 (Whereupon, SIN Exhibits Nos.
9 22 through 25 were received
10 in evidence.)

11 Mr. Garrett?

12 REDIRECT EXAMINATION

13 BY MR. GARRETT:

14 Q Dr. Lemieux, SIN Exhibits 22 through 25, as I
15 understand them, reports a duplication of major league
16 telecasts. Now, you had testified previously that these
17 are a number of isolated instances, wouldn't you agree?

18 A They obviously have been chosen to represent
19 this situation.

20 Q You testified earlier that there were literally
21 thousands of games that were presented by the Joint Sports
22 Claimants. Do you have any idea how often such instances
23 of duplication occur within that broader group?

24 A Well, if we take the superstition duplication,
25 at most, it could only account for, I believe that National

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49 1 League teams play something like 14 or 15 games a season
2 with each other. So it may be the case that among the
3 three superstations, we might be talking about, at most,
4 if all the games were duplicated, maybe 50 games, at most,
5 but as we talked about -- as I talked about in my testimony,
6 the local blackout rules and other situations make it
7 likely that not all of those 50 games would be duplicated.

8 Q That's 50 out of how many?

9 A Well, among three stations, it would be 50 out
10 of 3 times 162, which is about 500.

11 Q Now, Doctor, the predicate for Mr. Senter's
12 cross-examination, as I understand it, was your testimony
13 concerning Bakersfield translator station. It is correct,
14 is it not, that in the case of Bakersfield, about which you
15 testified, that all of the SIN World Cup telecasts were
16 available locally as well as over a distant signal, is
17 that not correct?

18 A That's my understanding, yes.

19 Q Now he's also given examples here of WGN and WOR
20 and WGN and WTBS. Do you have any data as to how many of
21 the several thousand cable systems in the United States ac-
22 tually carried both of those signals together at the same
23 time in 1982-2, that's the second accounting period of
24 1982?

25 A I don't have any exact data on that, but it's

50

1 -- obviously, not all of the systems that carried any one
2 of those signals.

3 Q Doctor, let me go back to some of the testimony
4 from you this morning. We had provided, or you had pro-
5 vided the information in Joint Sports Claimants Phase II
6 Exhibit Number 8 in response to a request by Commissioner
7 Aguero. There were a number of questions from the
8 Commissioners about that Exhibit 8.

9 Could you compare the data in that exhibit,
10 Number 8, with the kind of audience data that you have
11 presented in Joint Sports Claimants Phase II Exhibit Num-
12 ber 4? Actually, Doctor, let me be a little more specific
13 in my question.

14 A Could you be a little more specific.

15 Q What does the data in Joint Sports Claimants
16 Phase II Exhibit Number 8 purport to show?

17 A The figures presented in Exhibit 8 are viewing
18 in the whole market of these stations -- that is, viewing
19 the SIN affiliate in Chicago whereas the data in Exhibit
20 4A, while based on the same underlying database represents
21 distant signal viewing.

22 Q Mr. Senter had questioned you about MPAA's
23 exclusion of four counties from within the KMEX ADI in the
24 MPAA Nielsen Viewing Study. What was the impact, to the
25 best of your knowledge, of the exclusion of those four

1 counties?

2 A Well, those counties would have been -- those
3 were counties that were considered to be local to the
4 Nielsen defined market, but were defined to be distant
5 with regard to distant signal viewing vis-a-vis the FCC
6 rules about distant signal viewing, so that in fact because
7 those counties were moved from the local designation by
8 Nielsen into the distant designation by MPAA they, in fact,
9 expanded the possible universe of viewing and thus
10 presumably contributed to an increase in SIN's viewing
11 in those counties to the extent there was such viewing.
12 The overall result would be to increase the size of the
13 SIN viewing universe.

14 Q Mr. Senter asked you whether you had personally
15 calculated all 161 million household hours Joint Sports
16 Claimants programming by reviewing the back volume,
17 and I gather your testimony was that you did not.

18 A That's correct.

19 Q Where did that information come from, again?

20 A It came from a computer run off the Nielsen
21 tapes that had been provided by MPAA, by the MPAA staff
22 under the direction of Mr. Cooper.

23 Q And what was the total share of viewing accorded
24 to Joint Sports Claimants as provided to us by the Motion
25 Picture Association?

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1 A It's the 8.37, I believe, figure in Exhibit 4B.

2 Q And how does that relate to shares of viewing
3 that have been produced by earlier studies of the Motion
4 Picture Association and Nielsen?

5 A It is certainly in the same general ballpark.
6 It may, in fact, be somewhat higher than earlier studies.
7 I'd have to go back and look to be sure.

8 Q Now Mr. Senter also questioned you with respect
9 to Exhibit 4C, as to the MPAA and Nielsen classifications
10 of various types of Hispanic programming, and he questioned
11 whether, indeed, that programming was Hispanic. Do you
12 recall that?

13 A Yes, I do.

14 Q And do you recall that all of that questioning
15 concerned the programs presented over WNJU?

16 A Yes, it did.

17 Q If one excluded all of NJU's telecasts, not just
18 the isolated instances picked by Mr. Senter, but one
19 excluded all of that programming, Dr. Lemieux, what would
20 that do to the numbers in Exhibit 4C?

21 A It would change the .51 percent for the SIN
22 World Cup, to .58 percent. That is, the share of viewing
23 on KMEX alone was accounted for by the SIN World Cup
24 accounted to .58 percent of all the viewing on KMEX as
25 opposed to the .51 for combining the two stations together

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1 in the exhibit.

2 Q Now Mr. Senter also questioned you about the
3 exclusion by the Motion Picture Association, or Nielsen,
4 or both, of WXTV, a SIN affiliate, from the Nielsen MPAA
5 study. Do you recall that?

6 A Yes, I do.

7 Q First of all, there were nine other television
8 stations affiliated with SIN in 1982, which broadcast
9 World Cup telecasts, according to SIN. Were any of the
10 other nine -- did any of the other nine meet the criteria
11 set forth in the Nielsen methodology here?

12 A No, they all reached too few a number of Form 3
13 distant signals to be able to meet the criteria.

14 Q WXTV was the only instance, potential instance
15 where the SIN affiliated station was excluded even though
16 it appeared to meet the criteria in the methodology
17 statement?

18 A That's my understanding, yes.

19 Q Do you have any explanation for why it was
20 excluded?

21 A Well, I suppose I should preface this by saying
22 we called Nielsen and the MPAA to find out about this,
23 and Nielsen has agreed to go back and look through its
24 records, which it claimed were in the vault, and let us
25 know as soon as possible, but as I discussed this morning

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54 1 with regard to the stations on the chart, WXTV did not
2 make the minimum viewing requirement to be reported in
3 the July 1982 book, and I suspect not in the other periods
4 as well, and if in an audience where the potential audience
5 was probably something on the order of 10 million homes
6 in the New York City market, it could not garner enough
7 viewing to be reported in the New York City market, it
8 is unlikely that in its 160,000 household distant signal
9 market, it's going to have enough entries in the viewing
10 diaries to be able to produce statistically valid results
11 and, therefore, was probably excluded for statistical
12 reasons.

13 Q Doctor, turning your attention to the Nielsen
14 MPAA study, the particular World Cup telecast over KMEX
15 for which viewing data was provided, what games were those?

16 A The July sweep period included four of the likely
17 most popular games -- that is, the final, the consolation
18 game between the two teams which were playing for third
19 and fourth place, that was on Saturday afternoon, and then
20 the semi-final games on the first Thursday of the rating
21 period, between the semi-final contestants.

22 Q Would you compare the kinds of audiences those
23 three sports telecasts received?

24 A Yes. The final, by itself, received an audience
25 of somewhat over 14,000 distant signal households. The

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55 1 audience for the consolation game on Saturday afternoon
2 received an audience in the neighborhood of 4,000 house-
3 holds, and the audience size for the semi-final game
4 televised on Thursday night by SIN received no reportable
5 audience whatsoever. The average of those three is what
6 makes up the 6,460 number in the SIN cable Exhibit 16.

7 Q Doctor, do you have any understanding as to the
8 times of day when the other World Cup telecasts were
9 presented by SIN?

10 A It's my understanding that the games previous
11 to the finals were generally telecast either in the early
12 morning or on a replay basis late at night simply because
13 they were being imported from Spain and there was con-
14 siderable time zone differences.

15 It's my recollection from reading the testimony
16 that the most of the games were telecast at something
17 like 11:00 a.m. and 3:00 p.m. Eastern Standard Time.

18 Q And the ones that were actually measured in the
19 Nielsen study were televised when?

20 A The Thursday game which received a zero score
21 was telecast I believe also late at night, some 10:00 or
22 11:00, whereas the two telecasts that received any viewing
23 whatsoever were telecast on Saturday afternoon Eastern
24 time and late in the morning on Saturday West Coast time.

25 Q And the final was televised when?

56 1 A I believe it began at 10:45 a.m.

2 Q On Sunday?

3 A On Sunday.

4 Q Could I ask counsel to put back Exhibit 13.

5 Doctor, it is the case that -- do you know if the Joint
6 Sports Claimants were involved in any way with the selec-
7 tion of the sample stations of the Nielsen MPAA viewing
8 study, is that correct?

9 A That's correct.

10 Q You had no other involvement in any way in
11 selecting the particular data, correct?

12 A No, I did not.

13 Q Neither did the Joint Sports Claimants?

14 A No, they didn't.

15 Q You have taken the data exactly as the MPAA
16 and Nielsen provided it to you?

17 A That's correct.

18 Q Now directing your attention to Joint Sports
19 Claimants Exhibit 13 -- I'm sorry -- SIN Exhibit 13, as I
20 understand it, the purpose of that is to show that SIN
21 was somehow disadvantaged by the selections made by the
22 MPAA and Nielsen. I wonder if you could just give us
23 your comments on the fairness of the various comparisons
24 that are made by SIN counsel in this exhibit?

25 A Well, if we start with the first line about the

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57 1 percentage of games, we found, for example, that the
2 coverage of WTBS that I spoke about in the direct testimony
3 this morning under cross-examination, only 20 percent of
4 the baseball games carried, or the Atlanta Braves games
5 carried on WTBS were, in fact, included in the sample.

6 One of the reasons for this is that the choice
7 of the sweep months, February, May, July and November, tend
8 to not represent months where there is a lot of sports
9 activity, namely, March and April as the basketball and
10 hockey seasons head into playoffs, and August and September
11 as the baseball season heads into the World Series, so
12 that because a lot of those games tend to be televised,
13 that televising becomes heavier as you get further into
14 the season, the particular choice of Nielsen sweep period
15 months tends to pick up a disproportionately small number
16 of telecasts, as for instance, the 20 percent figure showed
17 for the Atlanta Braves games.

18 If we go to the second line where it talks about
19 the percentage of stations that are represented --

20 Q Doctor, before you do, do you have any opinion
21 as to the -- focusing your attention now on the total
22 viewing shares of SIN World Cup telecasts versus those of
23 the Joint Sports Claimants, do you have an opinion as to
24 the impact of excluding 80 percent of Atlanta Braves games
25 from that analysis as opposed to excluding 94 percent of

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1 the SIN World Cup telecasts?

2 A I was going to talk about that when we got to
3 subscriber numbers, but if we think about it in terms of
4 its total impact in the universe of distant signal viewing,
5 obviously excluding 80 percent of the games on the most
6 widely distributed distant signal, it's going to have a
7 considerably greater impact overall in terms of distant
8 signal evaluation of programs than excluding even 95 per-
9 cent or 94 percent of the games on signals that have a
10 very small distant signal reach, so that if we think about
11 it in the aggregate in relative terms, even if it is the
12 case that we're talking about, excluding -- including only
13 6 percent of the games on SIN, those other 94 percent
14 of the games still aren't reaching very many people because
15 they are not carried in very many places, and in net impact,
16 overall, nationwide, in terms of distant signal viewing,
17 it's unlikely to have anywhere near the weight of excluding
18 80 percent of the games that are carried on signals that
19 have enormous viewing around the entire country.

20 Would you like me now to move on to the next
21 line? With regard to the comparison about stations, it's
22 the cast that the 62 station figure only reflects the flag-
23 ships of professional sports teams, and does not include
24 any of the 500-plus stations that carried NCAA games. So
25 if you included -- if you asked the question what percentage

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1 of all stations that originated Joint Sports Claimants
2 programming are included in the Nielsen sample, the answer
3 is it must be a number that looks much more like the SIN
4 number than it looks like the 62 percent number because
5 the denominator is much bigger. It includes all those
6 500-plus NCAA stations.

7 Similarly, when we move on to the question about
8 subscribers, the fact that -- first of all, one would have
9 to make the argument that it is one of the reasons why
10 sports programming is so important and so valuable to
11 cable operators, that they are, in fact, reaching such
12 a large percentage of subscribers. That in some way
13 shouldn't be seen as a negative characteristic about sports
14 programming, but, in fact, one of the positive characteristics
15 of sports programming, that it is, in fact, carried quite
16 widely. As a result, it is not surprising at all that
17 it is carried on the signals that reach the most subscribers
18 and those are the signals that were included in the
19 Nielsen sample.

20 Q Doctor, just going back to your testimony about
21 the impact of excluding 80 percent of the Braves games,
22 would you give us some comparative numbers as to the kind
23 of audiences that the Braves reached as opposed to those
24 that the World Cup telecast reached?

25 A Well, we have, for example -- these are, in fact,

60 1 daytime games because of their starting period -- and in
2 the July sweep month, daytime Braves baseball received
3 audiences of 317,000 homes, 353,000 homes, 356,000 homes,
4 and even the late night replays of games received audiences
5 that approached 100,000 homes.

6 So when we are comparing the exclusion of games
7 that are likely to be receiving hundreds of thousands
8 of viewers in months when there is no sweep period com-
9 pared to the exclusion of games which, at their best, appear
10 to draw 14,000 homes, you can see that the weight of ex-
11 cluding games on the Joint Sports Claimants stations,
12 especially on the superstations, it's going to be quite
13 substantial.

14 Q Dr. Lemieux, just putting aside all of the
15 criticism that you have of the comparisons drawn by SIN
16 counsel, it is obviously the case that SIN counsel has
17 attempted to make the best case he can through that exhibit
18 as to the underrepresentation of SIN stations, SIN tele-
19 casts in the MPAA Nielsen viewing study.

20 If we are going to give to them every single one
21 of the assumptions that they have made in computing that
22 SIN Exhibit 13, what is that going to do to the bottom line
23 figures as to the relative viewing of their SIN World Cup
24 telecasts versus the telecasts of the Joint Sports Claimants
25 as contained in Exhibit 4A of Joint Sports Claimants?

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61 1 A We tried to make a recalculation during the
2 lunch break, of what would have been the implications of
3 assuming that, to use counsel for SIN's figure, a third
4 of all of the SIN games had been included in the Nielsen
5 sample as opposed to simply three of the games, and, again
6 using the number that they presented before, we assumed
7 that those games received an audience of about 6,000
8 households.

9 We also made the same assumption concerning
10 the replayed games, the Best of the World Cup series,
11 that were shown in later parts of the year, and for that
12 we used the reported 1800 households that appear in the
13 November sweep period.

14 Doing all these calculations -- that is, giving
15 them -- assuming that a third of their games would have
16 been included in the sample, giving them their audience
17 size which, at least in the case of the live broadcast
18 of the games themselves, are higher than the average a
19 audience size for a typical quarterhour of programming on
20 KMEX, we would increase their number from the .03 percent
21 in Joint Exhibit 4A to about .16 percent.

22 MR. SENTER: Mr. Chairman, I object to this
23 question and the answer. He testified on cross-examination
24 from the Nielsen, the summary Nielsen volume, that these
25 sort of inferences -- Nielsen says these sort of inferences

62 1 cannot be made.

2 MR. GARRETT: I'm sorry, I think he was making
3 the same kinds of inferences that counsel was making when
4 he was drawing up the exhibit.

5 CHAIRMAN BRENNAN: Objection overruled.

6 MR. GARRETT: Were you able to get all of the
7 answer of the witness?

8 THE REPORTER: Yes.

9 BY MR. GARRETT:

10 Q I don't think that you had given the bottom line
11 number yet.

12 A I just said that it would go from .03 percent
13 to .16 percent.

14 MR. GARRETT: I have no further questions.

15 CHAIRMAN BRENNAN: Thank you, Doctor, for your
16 appearance and your testimony. We're glad you made the
17 lineup again.

18 (Whereupon, the witness was excused.)

19 We will recess until 10:00 a.m. tomorrow
20 morning.

21 (Whereupon, at 4:10 p.m., the hearing In the
22 Matter of CRT Docket Number 83-1 was adjourned, to re-
23 convene at 10:00 a.m., Tuesday, August 7, 1984.)
24
25

C E R T I F I C A T E

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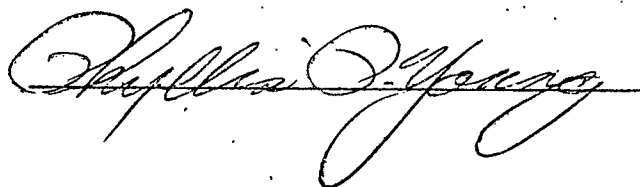
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